

REBOUL, MACMURRAY, BENTON, TWITT, MAYNARD & KRISTOL  
REGULATORY AUTHORITY

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EXECUTIVE SECRETARY

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LOS ANGELES, CALIF. 90067  
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January 28, 1998

JAN 29 1999

TN REGULATORY AUTHORITY

VIA FEDERAL EXPRESS

Mr. K. David Waddell  
Executive Secretary  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, Tennessee 37243-0505

Re: Joint Application for Approval of Transfer of Control of Coastal Telecom  
Limited Liability Company to Eclipse Telecommunications, Inc.

Dear Mr. Waddell:

On behalf of Coastal Telecom Limited Liability Company ("Coastal") and Eclipse Telecommunications, Inc. ("Eclipse") (collectively the "Parties"), enclosed for filing are an original and thirteen (13) copies of the above referenced application for approval of transfer of control of Coastal to Eclipse. The filing fee of \$25.00 is also enclosed. Additionally, as part of the application, enclosed are confidential documents, which have been sealed in a separate envelope and marked "CONFIDENTIAL." The Parties respectfully request that this information not be disclosed to persons outside of the Tennessee Regulatory Authority. Further, the Parties respectfully request expedited treatment of this application to permit them to consummate the transfer of control described in this application by May 1, 1999.

Please date stamp the enclosed extra copy of this filing and return it in the attached self-addressed, stamped envelope. Should you have any questions, please do not hesitate to contact our office.

Respectfully submitted,

*Kristie Stokes Hassett*

Kristie Stokes Hassett  
Counsel for Eclipse Telecommunications, Inc.

VOUCHER NO. 777-116256  
CD 4779 ENC. 281.03  
AMT. REC. 25.00  
DEPOSIT DATE 2/3/99

Enclosures

REC'D TN  
REGULATORY AUTH.  
JAN 29 PM 3 06  
OFFICE OF THE  
EXECUTIVE SECRETARY

REBOUL, MACMURRAY, HEWITT, MAYNARD & KRISTOL

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**RECEIVED**  
**ADMINISTRATIVE**

JAN 29 1999

January 28, 1998

TN REGULATORY AUTHORITY

*JK*  
VIA FEDERAL EXPRESS

99-00060

Mr. K. David Waddell  
Executive Secretary  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, Tennessee 37243-0505

Re: Joint Application for Approval of Transfer of Control of Coastal Telecom  
Limited Liability Company to Eclipse Telecommunications, Inc.

Dear Mr. Waddell:

On behalf of Coastal Telecom Limited Liability Company ("Coastal") and Eclipse Telecommunications, Inc. ("Eclipse") (collectively the "Parties"), enclosed for filing are an original and thirteen (13) copies of the above referenced application for approval of transfer of control of Coastal to Eclipse. The filing fee of \$25.00 is also enclosed. Additionally, as part of the application, enclosed are confidential documents, which have been sealed in a separate envelope and marked "CONFIDENTIAL." The Parties respectfully request that this information not be disclosed to persons outside of the Tennessee Regulatory Authority. Further, the Parties respectfully request expedited treatment of this application to permit them to consummate the transfer of control described in this application by May 1, 1999.

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Respectfully submitted,

*Kristie Stokes Hassett*

Kristie Stokes Hassett  
Counsel for Eclipse Telecommunications, Inc.

Enclosures

**Before the  
TENNESSEE REGULATORY AUTHORITY**

Joint Application for Authority to     )  
Transfer Control of Coastal             )  
Telecom Limited Liability Company    )  
to Eclipse Telecommunications, Inc.    )

Docket No. 99-00060

**JOINT APPLICATION**

Eclipse Telecommunications, Inc. ("Eclipse") and Coastal Telecom Limited Liability Company ("Coastal") (referred to jointly as the "Parties"), by their attorneys, hereby request approval from the Tennessee Regulatory Authority, pursuant to Tennessee Code Annotated §65-4-112, for the transfer of control of Coastal to Eclipse. Specifically, the Parties respectfully request that the Regulatory Authority approve the transfer of control of the membership interests in Coastal to Eclipse, and the ensuing merger of Coastal into Eclipse.

As described below, Eclipse and IXC Internet Services, Inc. ("IXC Internet"), an affiliate of Eclipse, will acquire the current membership interests in Coastal.<sup>1</sup> Once the membership interests are acquired, Coastal will be merged into Eclipse. Coastal will then cease to exist and Eclipse will be the surviving corporation. Following the completion of the just described transaction, Coastal will surrender its Certificate of Authority. Eclipse will continue to provide services to the current customers of Eclipse and the former customers of Coastal.

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<sup>1</sup> As discussed further below, Eclipse will acquire a 99 percent membership interest in Coastal, and IXC Internet will acquire a one percent interest. Coastal is a Tennessee limited liability company, and Tennessee law requires Coastal to have at least two members. IXC Internet provides Internet services and is not engaged in the provision of interexchange or local telecommunications services.

The Parties respectfully request approval of this transaction as soon as possible, so that the parties may close the proposed transaction by May 1, 1999. A complete description of the transaction is included below.

**I. THE PARTIES**

**A. Eclipse Telecommunications, Inc.**

Eclipse, a Delaware corporation, maintains its headquarters at 1122 Capital of Texas Highway South, Austin, Texas 78746-6426. Eclipse currently operates as a reseller of intrastate interexchange services in forty-eight states, including Tennessee. Eclipse received its authority to provide telecommunications services in Tennessee under the name Network Long Distance, Inc. on August 2, 1995, in Case No. 95-02659.<sup>2</sup> Eclipse also provides interstate and international telecommunications services pursuant to authority of the Federal Communications Commission ("FCC").

Eclipse is a wholly owned subsidiary of IXC Communications Services, Inc. ("IXC-CSI"). IXC-CSI, in turn, is a wholly owned subsidiary of IXC Communications, Inc. ("IXC"), whose stock is publicly traded on the NASDAQ Stock Market. IXC is financially well qualified. In October 1995, IXC issued and sold notes in the aggregate principal amount of \$285,000,000 to institutional and accredited investors. In July 1996, IXC's initial public offering of equity generated net proceeds (before expenses) of approximately \$83,000,000 in additional capital for the company. In April 1997, IXC completed the sale of \$100 million of 7¼% Junior Convertible Preferred Stock Due 2007. In August 1997, IXC completed the sale of \$300 million

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<sup>2</sup> Network Long Distance, Inc.'s name change to Eclipse was approved in Case No. 98-00508.

of 12½% Junior Exchangeable Preferred Stock Due 2009. In March 1998, IXC completed the sale of Depositary Shares of 6 3/4% Cumulative Convertible Preferred Stock, which resulted in net proceeds of approximately \$128 million for the company. In April 1998, IXC raised approximately \$450 million through the issuance of 9% Senior Subordinated Notes Due 2008. Most recently, in October 1998, IXC-CSI established a \$600 million credit facility.

Current financial information for IXC is attached hereto as Exhibit "A."

As an experienced and duly certificated interexchange carrier, Eclipse has more than sufficient managerial, technical and financial qualifications to acquire control of Coastal. Further information concerning Eclipse's legal, technical, managerial and financial qualifications to provide telecommunications services was filed with Eclipse's application for certification, filed with the Regulatory Authority in Case No. 95-02659, and is incorporated herein by reference.

**B. Coastal Telecom Limited Liability Company**

Coastal, a Tennessee Limited Liability Company, is currently composed of two member entities -- the Andrew M. Bursten 1994 Trust and the Riva Bursten 1994 Trust. Coastal maintains its headquarters at 2 Riverway, Suite 800, Houston, Texas 77056. Coastal provides resold intrastate interexchange telecommunications services in nine states, including Tennessee. Coastal received its authority to provide telecommunications services in Tennessee on August 23, 1995 in Case No. 95-02904.

Further information concerning Coastal's legal, technical, managerial and financial qualifications to provide telecommunications services was filed with Coastal's application for certification, filed with the Regulatory Authority in Case No. 95-02904, and is incorporated

herein by reference. Confidential current financial information for Coastal has been marked "Confidential," and is being submitted in a separate, sealed envelope.

## **II. DESIGNATED CONTACTS**

The designated contacts for questions concerning the application are:

For Eclipse:

James E. Magee  
Kristie Stokes Hassett  
Reboul, MacMurray, Hewitt,  
Maynard & Kristol  
1111 19th Street, N.W.  
Suite 406  
Washington, D.C. 20036  
Telephone: (202) 429-0004  
Facsimile: (202) 429-8743

For Coastal:

Leon Nowalsky  
Nowalsky, Bronston & Gothard,  
L.L.P.  
3500 N. Causeway Boulevard  
Suite 1442  
Metairie, LA 70002  
Telephone: (504) 832-1984  
Facsimile: (504) 831-0892

## **III. REQUEST FOR PERMISSION TO TRANSFER CONTROL OF COASTAL TO ECLIPSE**

The Parties seek authority to transfer control of Coastal to Eclipse. In this regard, on January 11, 1999, Eclipse and Coastal executed a Purchase Agreement ("Agreement").<sup>3</sup> As set forth in Footnote 1 above, Coastal, a Tennessee limited liability company, is required to have two members. Accordingly, Eclipse and its affiliate, IXC Internet, will acquire all membership interests in Coastal after requisite regulatory approvals have been obtained. Eclipse and IXC Internet will purchase 100 percent of the membership interests in Coastal, which are currently owned equally by two trusts -- the Andrew M. Bursten 1994 Trust and the Riva Bursten 1994 Trust. Eclipse will acquire a 99 percent membership interest and IXC Internet will acquire a one

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<sup>3</sup> A copy of the redacted Agreement is attached hereto as Exhibit "B." An unredacted copy of the Agreement containing confidential information has been marked "Confidential," and is being submitted in a separate, sealed envelope.

percent membership interest. Upon acquisition of the membership interests, Coastal will be merged with and into Eclipse.<sup>4</sup> Eclipse will be the survivor of the merger with Coastal, and Coastal will surrender its certification in Tennessee.

Eclipse's and Coastal's current customers will not be affected adversely by the proposed acquisition. In taking over Coastal's operations, Eclipse will incorporate into its tariff Coastal's tariffed prices, terms, and conditions of service for current Coastal customers. Accordingly, the proposed transaction will in no way disrupt service or cause inconvenience or confusion to Coastal's customers. Further, the Parties will send appropriate notifications to their affected customers. Similarly, the proposed transaction will have no effect on the operation of Eclipse, which will continue to provide telecommunications services to its intrastate customers pursuant to its existing authorization. The current management of Eclipse will not change as a result of the transaction. Coastal's management team and employees will also remain in place as employees of Eclipse.

#### **IV. PUBLIC INTEREST ANALYSIS**

The transfer of control described above is clearly in the public interest. The proposed transaction will bring together Eclipse and Coastal, two rapidly growing providers of interexchange telecommunications services. The combination of the two companies' resources

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<sup>4</sup> As part of the same transaction in which Eclipse is acquiring Coastal, Eclipse is also acquiring the membership interests of a Wisconsin limited liability company also named Coastal Telecom Limited Liability Company ("Wisconsin Coastal"). The two current members of Coastal are also the members of Wisconsin Coastal, which does not operate in North Carolina. Under Wisconsin law, Wisconsin Coastal cannot be merged directly into Eclipse, a Delaware corporation. Accordingly, Wisconsin Coastal will be merged into Coastal immediately prior to Coastal's merger into Eclipse. The merger of Wisconsin Coastal into Coastal is a mere formality, and will not in any way affect Coastal's current operations or proposed merger into Eclipse.

and expertise will strengthen competition in the interexchange marketplace in Tennessee and elsewhere, by permitting the combined companies to compete more effectively with larger carriers currently providing service in Tennessee.

The transaction will also combine the complementary management skills, background, and experience of Eclipse and Coastal, allowing the companies to capitalize and build on the diverse expertise of each company in providing telecommunications services to the public. In addition, the transfer of control will enable the combined companies to realize significant economic and marketing efficiencies and enhancements, permitting significant savings in operating costs and capital expenditures. In sum, the proposed transaction will benefit the public interest by enhancing the ability of the combined companies to offer a full range of competitively priced services in the interexchange marketplace, thereby further invigorating interexchange competition in Tennessee.

Verifications of the Parties are attached hereto as Exhibit "C."

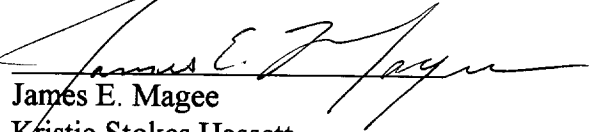


WHEREFORE, the Parties respectfully request the Regulatory Authority to expeditiously grant approval of the transaction described above, allowing the proposed transfer of control of Coastal to Eclipse.

Respectfully submitted,

Eclipse Telecommunications, Inc.  
Coastal Telecom Limited Liability  
Company

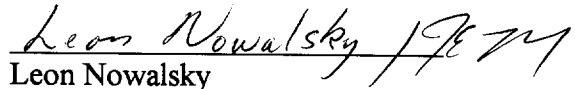
By:



James E. Magee  
Kristie Stokes Hassett  
Reboul, MacMurray, Hewitt,  
Maynard & Kristol  
1111 19th Street, N.W.  
Suite 406  
Washington, D.C. 20036

Attorneys for Eclipse Telecommunications,  
Inc.

By:



Leon Nowalsky  
Nowalsky, Bronston & Gothard, L.L.P.  
3500 N. Causeway Boulevard  
Suite 1442  
Metairie, LA 70002

Attorney for Coastal Telecom Limited  
Liability Company

January 28, 1999

**EXHIBIT A**  
**IXC Financial Information**

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SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

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FORM 10-Q

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☒ (X) QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE  
SECURITIES EXCHANGE ACT OF 1934

FOR THE QUARTERLY PERIOD ENDED SEPTEMBER 30, 1998

OR

☐ ( ) TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE  
SECURITIES EXCHANGE ACT OF 1934

FOR THE TRANSITION PERIOD FROM \_\_\_\_\_ TO \_\_\_\_\_

COMMISSION FILE NUMBER 0-20803

-----

IXC COMMUNICATIONS, INC.  
(EXACT NAME OF REGISTRANT AS SPECIFIED IN ITS CHARTER)

-----

DELAWARE  
(STATE OR OTHER JURISDICTION OF  
INCORPORATION OR ORGANIZATION)

75-2644120  
(I.R.S. EMPLOYER  
IDENTIFICATION NO.)

1122 CAPITAL OF TEXAS HIGHWAY SOUTH,  
AUSTIN, TEXAS  
(ADDRESS OF PRINCIPAL EXECUTIVE OFFICES)

78746-6426  
(ZIP CODE)

(REGISTRANT'S TELEPHONE NUMBER, INCLUDING AREA CODE): (512) 328-1112

-----

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

The number of shares of Common Stock, \$.01 par value, outstanding (the only class of common stock of the Company outstanding) was 36,177,969 on November 12, 1998.

=====

## IXC COMMUNICATIONS, INC. AND SUBSIDIARIES

REPORT ON FORM 10-Q  
FOR THE QUARTER ENDED SEPTEMBER 30, 1998

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## IXC COMMUNICATIONS, INC.

CONDENSED CONSOLIDATED BALANCE SHEETS  
(DOLLARS IN THOUSANDS, EXCEPT SHARE AND PER SHARE AMOUNTS)

	SEPTEMBER 30, 1998	DECEMBER 31, 1997
	----- (UNAUDITED)	-----
<b>ASSETS</b>		
Cash and cash equivalents.....	\$ 141,690	\$ 155,855
Accounts and other receivables, net of allowance for doubtful accounts of \$17,763 at September 30, 1998 and \$13,119 at December 31, 1997.....	141,376	113,096
Current portion of notes receivable.....	53,529	--
Other current assets.....	7,404	4,108
	-----	-----
Total current assets.....	343,999	273,059
Property and equipment.....	1,090,455	734,282
Less: accumulated depreciation.....	(180,952)	(120,408)
	-----	-----
Property and equipment, net.....	909,503	613,874
Investments in unconsolidated subsidiaries.....	141,757	17,497
Other non-current assets.....	110,559	64,442
	-----	-----
Total assets.....	\$1,505,818	\$ 988,872
	=====	=====
<b>LIABILITIES, REDEEMABLE PREFERRED STOCK AND STOCKHOLDERS' DEFICIT</b>		
Accounts payable-trade.....	\$ 91,426	\$ 86,651
Accrued service cost.....	49,278	58,994
Accrued liabilities.....	83,481	43,427
Current portion of unearned revenue.....	25,569	6,310
Current portion of long-term debt and capital lease obligations.....	13,992	12,294
	-----	-----
Total current liabilities.....	263,746	205,676
Long-term debt and capital lease obligations, less current portion.....	483,457	308,453
Unearned revenue -- noncurrent.....	350,632	59,627
Other noncurrent liabilities.....	5,139	10,419
7 1/4% Junior Convertible Preferred Stock; \$.01 par value; 3,000,000 shares of all classes of Preferred Stock authorized; 1,074,500 shares issued and outstanding (aggregate liquidation preference of \$107,450 at September 30, 1998 and \$105,537 and December 31, 1997).....	103,507	101,239
12 1/2% Junior Exchangeable Preferred Stock; \$.01 par value; authorized -- 3,000,000 shares of all classes of Preferred Stock authorized; 338,844 shares issued and outstanding (aggregate liquidation preference of \$344,132 at September 30, 1998 and \$313,786 at December 31, 1997, including accrued dividends of \$5,294 at September 30, 1998 and \$4,828 at December 31, 1997).....	333,230	302,129
Stockholders' deficit:		
10% Junior Series 3 Cumulative Preferred Stock, \$.01 par value; authorized -- 3,000,000 shares of all classes of Preferred Stock; no shares issued and outstanding at September 30, 1998 and 414 shares issued and outstanding at December 31, 1997.....	--	1
6 3/4% Cumulative Convertible Preferred Stock, \$.01 par value; authorized -- 3,000,000 shares of all classes of		

Preferred Stock authorized; 155,250 shares issued and outstanding at September 30, 1998 (aggregate liquidation preference of \$155,250 at September 30, 1998).....	2	--
Common Stock, \$.01 par value; 100,000,000 shares authorized: 36,155,732 shares issued and outstanding at September 30, 1998 and 35,575,325 shares issued and outstanding at December 31, 1997.....	361	356
Additional paid-in capital.....	265,331	143,355
Accumulated deficit.....	(299,587)	(162,383)
	-----	-----
Total stockholders' deficit.....	(33,893)	(18,671)
	-----	-----
Total liabilities, redeemable preferred stock and stockholders' deficit.....	\$1,505,818	\$ 968,872
	=====	=====

See accompanying notes.

## IXC COMMUNICATIONS, INC.

CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS  
(DOLLARS IN THOUSANDS, EXCEPT PER SHARE DATA)  
(UNAUDITED)

	THREE MONTHS ENDED SEPTEMBER 30,		NINE MONTHS ENDED SEPTEMBER 30,	
	1998	1997	1998	1997
Net operating revenue:				
Private line.....	\$ 65,539	\$ 41,948	\$ 159,788	\$111,311
Long distance switched services.....	118,741	94,881	338,818	246,212
Other.....	8,989	—	8,989	—
	185,269	136,829	498,787	357,523
Operating expenses:				
Cost of services.....	189,904	181,835	325,526	276,988
Operations and administration.....	48,894	28,847	99,422	74,418
Depreciation and amortization.....	34,881	22,866	77,589	48,339
Merger related costs.....	444	382	8,889	3,627
	(54)	(15,421)	(11,839)	(45,761)
Operating loss.....	(54)	(15,421)	(11,839)	(45,761)
Interest income.....	2,159	2,232	7,888	4,699
Interest expense.....	(7,588)	(8,827)	(22,421)	(24,114)
Equity in net loss of unconsolidated subsidiaries.....	(8,387)	(7,317)	(38,326)	(13,668)
Other, net.....	181	(1,757)	357	(1,731)
	(13,681)	(38,298)	(57,149)	(88,575)
Loss before provision for income taxes, minority interest and extraordinary item.....	(13,681)	(38,298)	(57,149)	(88,575)
Provision for income taxes.....	(1,647)	(696)	(8,266)	(586)
Minority interest.....	(216)	(186)	(641)	(583)
	(15,464)	(31,172)	(66,056)	(81,584)
Loss before extraordinary item.....	(15,464)	(31,172)	(66,056)	(81,584)
Extraordinary gain (loss) on early extinguishment of debt, including income tax of \$3,578.....	163	—	(69,647)	—
	(15,381)	(31,172)	(135,783)	(81,584)
Net loss.....	(15,381)	(31,172)	(135,783)	(81,584)
Dividends applicable to preferred stock.....	(15,341)	(6,727)	(42,548)	(9,485)
	\$(30,642)	\$(37,899)	\$(178,251)	\$(91,069)
Net loss applicable to common stockholders.....	=====	=====	=====	=====
Basic and diluted loss per share:				
Before extraordinary item.....	\$ (.86)	\$ (1.09)	\$ (3.83)	\$ (2.63)
Extraordinary item.....	.81	—	(1.95)	—
	\$(.85)	\$ (1.09)	\$ (4.98)	\$ (2.63)
Net loss.....	=====	=====	=====	=====

See accompanying notes.

## IXC COMMUNICATIONS, INC.

**CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS**  
**(DOLLARS IN THOUSANDS)**  
**(UNAUDITED)**

	<b>FOR THE NINE MONTHS ENDED SEPTEMBER 30,</b>	
	<b>1998</b>	<b>1997</b>
<b>Net cash provided by operating activities.....</b>	<b>\$ 127,876</b>	<b>\$ 21,720</b>
<b>Investing activities</b>		
Release of funds from escrow under 12 1/2% Senior Notes...	--	69,584
Deposit into escrow under 12 1/2% Senior Notes.....	--	(18,152)
Purchase of property and equipment.....	(336,609)	(203,599)
Sale of short-term investments, net.....	--	788
Proceeds from payments of notes receivable.....	2,025	--
Acquisitions, net of cash acquired and common stock issued.....	(22,699)	(2,554)
Investment in unconsolidated subsidiaries.....	(26,885)	(17,742)
<b>Net cash used in investing activities.....</b>	<b>(384,168)</b>	<b>(171,695)</b>
<b>Financing activities</b>		
Proceeds from sale of 9% Senior Subordinated Notes.....	450,000	--
Net proceeds from sale of 6 3/4% Convertible Preferred Stock.....	147,213	--
Net proceeds from sale of 7 1/4% Convertible Preferred Stock.....	--	95,696
Net proceeds from sale of 12 1/2% Exchangeable Preferred Stock.....	--	288,287
Proceeds from new debt and capital lease obligations.....	14,022	--
Principal payments on long-term debt and capital lease obligations.....	(349,361)	(12,601)
Redemption of 10% Junior Series 3 Preferred Stock.....	(708)	--
Stock option exercises.....	3,445	248
Dividends paid.....	(6,544)	--
Other financing activities.....	--	92
Debt issuance costs.....	(14,438)	--
<b>Net cash provided by financing activities.....</b>	<b>243,629</b>	<b>371,722</b>
<b>Effect of change in year-end from merged entities.....</b>	<b>(1,502)</b>	<b>--</b>
<b>Net increase (decrease) in cash and cash equivalents.....</b>	<b>(14,185)</b>	<b>221,747</b>
<b>Cash and cash equivalents at beginning of period.....</b>	<b>155,855</b>	<b>63,302</b>
<b>Cash and cash equivalents at end of period.....</b>	<b>\$ 141,690</b>	<b>\$ 285,049</b>
<b>Supplemental disclosure of cash flow information:</b>		
Cash paid for:		
Interest.....	\$ 23,117	\$ 19,862
Taxes.....	\$ 3,092	\$ 182

See accompanying notes.



## IXC COMMUNICATIONS, INC. AND SUBSIDIARIES

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS  
(UNAUDITED)

## 1. BASIS OF PRESENTATION AND SIGNIFICANT ACCOUNTING POLICIES

The accompanying unaudited Condensed Consolidated Financial Statements have been prepared in accordance with generally accepted accounting principles for interim financial information and with the instructions to Form 10-Q and Article 10 of Regulation S-X. Accordingly, they do not include all of the information and notes required by generally accepted accounting principles for complete financial statements. In the opinion of management, all adjustments (consisting of normal recurring accruals) considered necessary for a fair presentation for the periods indicated have been included. Operating results for the three and nine month periods ended September 30, 1998 are not necessarily indicative of the results that may be expected for the year ended December 31, 1998. The accompanying unaudited Condensed Consolidated Financial Statements have been restated for all periods presented to include the operations of Eclipse Telecommunications, Inc., formerly Network Long Distance, Inc. ("Eclipse"), which was acquired on June 3, 1998, in a transaction accounted for as a pooling of interests (See Note 2). The Condensed Consolidated Balance Sheet at December 31, 1997 has been derived from the audited financial statements for the Company but does not include all of the information and notes required by generally accepted accounting principles for complete financial statements. The accompanying financial statements should be read in conjunction with the Company's audited consolidated financial statements and notes thereto for the year ended December 31, 1997. Certain amounts shown in the Company's 1997 financial statements have been reclassified to conform to the 1998 presentation.

## 2. MERGER WITH ECLIPSE

On June 3, 1998, the Company completed the acquisition of Eclipse through a merger of a Company subsidiary with Eclipse by exchanging approximately 4.05 million shares of its common stock for all of the outstanding common stock of Eclipse. Each share of Eclipse common stock was exchanged for .2998 shares of the Company's common stock. In addition, outstanding Eclipse stock options were converted at the same exchange factor into options to purchase shares of the Company's common stock. Prior to the merger, Eclipse's fiscal year ended on March 31. Therefore the reported 1997 year-end balance sheet information for Eclipse represents its financial position as of March 31, 1998. In order to report the movement in cash for the first six months of 1998, a \$1.5 million adjustment was reported in the condensed consolidated statement of cash flows, representing Eclipse's first quarter 1998 net income, which was in both the beginning retained earnings balance and the current period's net income.

The merger constituted a tax-free reorganization and has been accounted for as a pooling of interests. Accordingly, all prior period consolidated financial statements have been restated to include the combined results of operations, financial position and cash flows of Eclipse as though it had always been a part of the Company.

In connection with the merger, the Company recorded charges amounting to \$8.1 million for merger related costs, including professional services associated with the merger, termination costs associated with duplicate functions, costs of exiting excess office space and the write-off of duplicate equipment and software.

## 3. INVESTMENTS IN UNCONSOLIDATED SUBSIDIARIES

## PSINet

On February 25, 1998, the Company consummated agreements with PSINet, Inc. ("PSINet") which allow each party to market and sell the products and services

of the other party. Under the terms of the agreements, the Company will provide PSINet with an indefeasible right to use ("IRU") 10,000 miles of OC-48 transmission capacity on its network over a 20-year period in exchange for approximately 10.2 million shares representing under 20% (post-issuance) of PSINet common stock. If the value of the PSINet common stock received by the Company is less than \$240.0 million at the earlier of one year after the final delivery of the transmission capacity (scheduled for late-1999) or February 26, 2002, PSINet will deliver to IXC either

## IXC COMMUNICATIONS, INC. AND SUBSIDIARIES

## NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)

cash or additional PSINet common stock such that the value of the total consideration paid by PSINet is \$240.0 million. The Company receives a maintenance fee which, as the full capacity is delivered, is expected to increase to approximately \$11.5 million per year. Revenue from the IRU will be recognized over its term of 20 years as the capacity is delivered.

From the transaction date through May 1998, the Company accounted for its investment in PSINet under the equity method since the Company was deemed to have significant influence over PSINet based on its level of ownership. In June 1998, the Company changed from the equity method to the cost method due to a reduced level of ownership. At September 30, 1998 the Company's recorded investment in PSINet was approximately \$133.1 million.

**Marca-Tel**

As of September 30, 1998, the Company indirectly owned 24.5% of Marca-Tel S.A. de C.V. ("Marca-Tel") through its ownership of 50% of Progress International LLC ("Progress International"), which owns a holding company that owns 49% of Marca-Tel. The remaining 51% of Marca-Tel is owned by a Mexican individual and a subsidiary of Formento Radio Beep, S.A. de C.V. The other 50% of Progress International is owned by Westel International, Inc. ("Westel"). The Company's investment in Progress is negative \$12.8 million as of September 30, 1998 due to the recognized equity losses being greater than the Company's funding of its investment. Summary financial information and the equity losses recorded by the Company for Marca-Tel are as follows (in thousands):

	THREE MONTHS ENDED SEPTEMBER 30,		NINE MONTHS ENDED SEPTEMBER 30,	
	1998	1997	1998	1997
Net revenue.....	\$ 5,846	\$ 1,250	\$ 14,636	\$ 1,723
Gross margin (loss).....	719	(1,650)	2,037	(2,892)
Net loss from continuing operations.....	(1,982)	(6,720)	(7,051)	(17,431)
Net income (loss).....	(12,063)	(7,000)	(24,075)	(19,261)
Equity in net loss of Marca-Tel.....	\$ (4,621)	\$ (7,317)	\$ (15,873)	\$ (13,531)

In June 1998 the Company obtained a note receivable from Westel for \$14.9 million of advances that the Company had made to Progress International on Westel's behalf. The note receivable from Westel is secured by a portion of Westel's investment in Progress. As of September 30, 1998, the balance of the note receivable was \$12.9 million. In October 1998, Marca-Tel received a notice of default from its primary external financing source. Representatives of the Marca-Tel partners and the financing source are attempting to resolve this issue. Based on these discussions, the Company's indirect interest in Marca-Tel could be diluted or lost entirely.

**4. NOTE RECEIVABLE**

During the second quarter of 1998, the Company activated a previously signed IRU with a customer in exchange for a note that is payable over an 18-month period bearing interest at 12%. At September 30, 1998, \$94.1 million was outstanding under the note receivable.

**5. 9% SENIOR SUBORDINATED NOTES DUE 2008**

On April 21, 1998, the Company issued \$450.0 million of 9% Senior

Subordinated Notes Due 2008 (the "9% Senior Subordinated Notes"). In connection with the sale of the 9% Senior Subordinated Notes, the Company completed its tender offer to purchase for cash all of its outstanding 12 1/2% Senior Notes Due 2005 (the "Old Notes"). Pursuant to the terms of the tender offer, \$284.2 million (out of \$285.0 million) in aggregate principal amount of the Old Notes were tendered and accepted for payment by the Company. The Company used approximately \$342.7 million of the estimated \$435.6 million net proceeds of the 9% Senior Subordinated Notes offering to pay the tender offer price for the Old Notes. With the early extinguishment of

## IXC COMMUNICATIONS, INC. AND SUBSIDIARIES

## NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)

the Old Notes, a charge of approximately \$69.6 million was recorded as an extraordinary item net of related tax benefit in the second and third quarters of 1998.

The 9% Senior Subordinated Notes are general unsecured obligations of the Company and will be subordinate in right of payment to all existing and future senior indebtedness of the Company and other liabilities of the Company's subsidiaries. In connection with the consummation of the tender offer, the Old Notes were amended to eliminate substantially all of the restrictive covenants therein and all guarantees given thereunder.

**6. 6 3/4% CUMULATIVE CONVERTIBLE PREFERRED STOCK**

In March and April 1998, the Company sold \$155.3 million of 6 3/4% Cumulative Convertible Preferred Stock ("6 3/4% Convertible Preferred Stock") issued in the form of depositary shares (3,105,000 depositary shares at \$50 per share; each depositary share represents 1/20 of a share of 6 3/4% Convertible Preferred Stock at \$1,000 per share). The net proceeds of approximately \$147.2 million from the offering are being used to fund capital expenditures, including a portion of the network expansion, and for general corporate purposes, including acquisitions of related businesses or interests therein and joint ventures. The 6 3/4% Convertible Preferred Stock can be converted at the option of the holder thereof into shares of Common Stock, par value \$.01 per share, of the Company at any time unless previously redeemed or repurchased, at a conversion rate of 0.6874 shares of common stock per depositary share (13.748 shares of Common Stock per share of the 6 3/4% Convertible Preferred Stock). Dividends on the 6 3/4% Convertible Preferred Stock are payable quarterly in arrears in cash or Common Stock, under certain circumstances, on January 1, April 1, July 1 and October 1 of each year, commencing on July 1, 1998.

**7. SERIES 3 REDEMPTION**

On March 31, 1998, the Company redeemed the remaining 414 shares of its 10% Junior Series 3 Cumulative Redeemable Preferred Stock outstanding for approximately \$0.7 million in cash (\$1,000 per share, plus \$0.3 million of accrued and unpaid dividends).

**8. INCOME TAXES**

The provision for income taxes recorded during interim periods is calculated based on an estimated annual effective tax rate. For 1998, the effective tax rate is negative and includes the impact of gains from the transactions with PSINet (see Note 3) and other IRU transactions that have already occurred and others that are expected to occur later in the year. The Company has applied a valuation allowance against the deferred tax assets arising during 1998 due to the uncertainty of realization.

**9. COMMITMENTS AND CONTINGENCIES**

The Company has made and will continue to make material commitments related to the expansion of its network.

The Company entered into several agreements with major long distance carriers for the sale of dark fiber and capacity usage. Although these agreements provide for certain penalties if the Company does not complete construction of the defined routes within the time frame specified in the agreements, management does not anticipate that the Company will incur any substantial penalties under these provisions.

From time to time the Company is involved in various legal proceedings arising in the ordinary course of business, some of which are covered by

insurance. In the opinion of the Company's management, none of the claims relating to such proceedings will have a material effect on the financial condition or results of operations of the Company.

## IXC COMMUNICATIONS, INC. AND SUBSIDIARIES

## NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)

## 10. LOSS PER SHARE

Loss per share data are as follows (in thousands, except per share data):

	THREE MONTHS ENDED SEPTEMBER 30,		NINE MONTHS ENDED SEPTEMBER 30,	
	1998	1997	1998	1997
<b>INCOME (NUMERATOR)</b>				
Loss before extraordinary items.....	\$(15,464)	\$(31,172)	\$(66,056)	\$(81,584)
Extraordinary item.....	163	--	(69,647)	--
Net loss.....	(15,301)	(31,172)	(135,703)	(81,584)
Less: Dividends applicable to preferred stock.....	(15,341)	(6,727)	(42,548)	(9,485)
Net loss available to common stockholders.....	\$(30,642)	\$(37,899)	\$(178,251)	\$(91,069)
<b>SHARES (DENOMINATOR)</b>				
Weighted average common shares outstanding.....	36,014	34,791	35,774	34,623
<b>BASIC AND DILUTED LOSS PER SHARE</b>				
Before extraordinary item.....	\$ (0.86)	\$ (1.09)	\$ (3.03)	\$ (2.63)
Extraordinary item.....	0.01	--	(1.95)	--
Net loss.....	\$ (0.85)	\$ (1.09)	\$ (4.98)	\$ (2.63)

The following table summarizes securities outstanding as of the end of each period presented which could potentially dilute basic earnings per share in the future. Such securities were excluded from the computation above since they would have been anti-dilutive due to the Company's net loss. The figures presented for the 6 3/4% Convertible Preferred Stock and the 7 1/4% Junior Convertible Preferred Stock assume that each preferred share was converted into 13.748 common shares and 4.263 common shares, respectively.

	SEPTEMBER 30,	
	1998	1997
7 1/4% Junior Convertible Preferred Stock.....	4,580,593	4,418,915
6 3/4% Convertible Preferred Stock.....	2,134,377	--
Stock options.....	3,773,041	3,059,090
Stock in escrow from acquisitions.....	26,008	26,008
Other stock in escrow.....	93,941	93,941

## 11. STOCKHOLDER RIGHTS PLAN

In September 1998 the Company's Board of Directors declared a dividend of one Preferred Share Purchase Right on each outstanding share of its Common

Stock. Each Right entitles the holder to buy one one-thousandth of a share of new Series A Junior Participating Preferred Stock of the Company at an exercise price of \$210.00 per Right. The Rights will be exercisable if a person or group acquires 20% or more of the Common Stock of the Company (or if a stockholder of the Company currently holding more than 20% of the outstanding stock of the Company acquires any additional shares of Common Stock) or announces a tender offer for 20% or more of the Common Stock. The Company will be entitled to redeem the Rights at one cent per Right at any time before any such person acquires 20% or more of the outstanding Common Stock. Each Right will entitle its holder to purchase, at the Right's exercise price, a number of shares of Common Stock having a market value at that time of twice the Right's exercise price. Rights held by the 20% or more holder will become void and will not be exercisable to purchase shares at the bargain purchase price. If the Company is acquired in a merger or other business combination transaction after a person acquires 20% or more of the Company's Common Stock, each Right will entitle its holder to purchase, at the Right's then-current exercise price, a number of the acquiring company's common shares having a market value at that time of twice the



## IXC COMMUNICATIONS, INC. AND SUBSIDIARIES

## NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)

Right's exercise price. The dividend distribution was payable to stockholders of record on September 20, 1998. The Rights will expire on September 20, 2008.

**12. STOCKHOLDERS' EQUITY**

On July 29, 1998, the Company's Board of Directors approved a two-for-one split of the Company's common stock. The directors also approved an increase in the authorized number of shares of common stock to 300 million shares and the creation of a new class of Series B preferred stock for future use by the Company. Authorized shares of the new Series B preferred stock will be 17 million. The effective date for the stock split and change in capital structure was originally anticipated to occur in September 1998; however, in September 1998 these actions were postponed.

During the third quarter the Company's Board of Directors adopted and the Company's stockholders approved the Company's 1998 Stock Plan and reserved 3,150,000 shares for issuance thereunder. The 1998 Stock Plan provides for the grant of incentive stock options, non-qualified stock options, and restricted stock to employees, directors, and others, with grants generally having exercise prices equal to the fair market value of the Company's common stock at the date of grant. Options and restricted stock granted under the plan vest in four equal annual installments and expire after 10 years.

**13. SUBSEQUENT EVENTS**

On October 28, 1998, the Company entered into a \$600 million senior secured credit facility with a syndicate of commercial banks. The Company received funding under the credit facility of \$200 million, less \$4.2 million of transaction costs. The senior secured credit facility consists of a \$150 million revolving facility, a \$200 million term loan facility, and an uncommitted special purpose loan facility of \$250 million. The Company must comply with various financial and other covenants on an ongoing basis in addition to meeting the covenants on a pro forma basis prior to drawing additional amounts under the credit facility. Loans outstanding under the credit facility bear interest at either LIBOR or the lead commercial bank's prime rate plus applicable margins.

**14. NEW ACCOUNTING PRONOUNCEMENTS**

In September 1997, the FASB issued SFAS No. 130, "Reporting Comprehensive Income" ("SFAS No. 130"). SFAS No. 130 establishes standards for reporting and display of comprehensive income and its components in a full set of general-purpose financial statements. SFAS No. 130 is effective for fiscal years beginning after December 15, 1997. Due to the Company having no items of other comprehensive income in any of the periods presented, the adoption of SFAS No. 130 had no impact on the Company's reporting or display of financial information at September 30, 1998.

Also in September 1997, the FASB issued SFAS No. 131, "Disclosures about Segments of an Enterprise and Related Information" ("SFAS No. 131"). SFAS No. 131 establishes standards for the way that public business enterprises report information about operating segments in annual financial statements and requires that those enterprises report selected information about operating segments in interim financial reports issued to stockholders. SFAS No. 131 is effective for financial statements for fiscal years beginning after December 15, 1997. Interim period reporting of segment information is not required in the first year of adoption. The adoption of SFAS No. 131 will have no impact on the Company's consolidated results of operations, financial position or cash flows but will affect the disclosure of segment information.

In September 1998, the FASB issued SFAS No. 133, "Accounting for Derivative Instruments and Hedging Activities" ("SFAS No. 133"). SFAS No. 133 establishes

accounting and reporting standards requiring that every derivative instrument (including certain derivative instruments embedded in other contracts) be recorded in the balance sheet as either an asset or liability measured at its fair value. SFAS No. 133 requires that changes in the derivative's fair value be recognized currently in earnings unless specific hedge accounting criteria are met. Special accounting for qualifying hedges allows a derivative's gains and

## IXC COMMUNICATIONS, INC. AND SUBSIDIARIES

## NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)

losses to offset related results on the hedged item in the income statement, and requires that a company must formally document, designate, and assess the effectiveness of transactions that receive hedge accounting. Because the Company has not entered into derivative financial instruments, the implementation of SFAS No. 133 will not have a material impact on the Company's consolidated results of operations, financial position or cash flows.

In April 1998, the Accounting Standards Executive Committee issued Statement of Position ("SOP") 98-5, "Reporting on the Costs of Start-Up Activities". The SOP requires costs of start-up activities and organization costs to be expensed as incurred, and is effective for fiscal years beginning after December 15, 1998. The effects of adoption must be reported as a cumulative change in accounting principle. The Company expects that it will record a cumulative effect of a change in accounting to write off all unamortized start-up costs on its balance sheet at January 1, 1999 in its first quarter ended March 31, 1999; however, the Company has not yet quantified the amount of this write-off.

## ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

Except for the historical information contained below, the matters discussed in this item are forward-looking statements that involve a number of risks and uncertainties. The Company's actual liquidity needs, capital resources and results may differ materially from the discussion set forth in the forward-looking statements. For a discussion of important factors that may cause the actual results, performance or achievements of the Company to be materially different from those expressed or implied by the forward-looking statements, see "Business -- Risk Factors" in the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 1997. In light of such risks and uncertainties, there can be no assurance that the forward-looking information contained in this item will in fact transpire.

### THREE AND NINE MONTHS ENDED SEPTEMBER 30, 1998 COMPARED WITH THE THREE AND NINE MONTHS ENDED SEPTEMBER 30, 1997

On June 3, 1998, the Company completed a merger of a Company subsidiary with Eclipse Telecommunications, Inc., formerly Network Long Distance, Inc. ("Eclipse"), by exchanging approximately 4.05 million shares of its common stock for all of the outstanding common stock of Eclipse. Each share of Eclipse was exchanged for .2998 shares of common stock of the Company. In addition, outstanding Eclipse stock options were converted at the same exchange factor into options to purchase shares of the Company's common stock. The merger constituted a tax-free reorganization and has been accounted for as a pooling of interests. Accordingly, all prior period consolidated financial statements have been restated to include the combined results of operations, financial position, and cash flows of Eclipse as though it had always been a part of the Company.

Net operating revenue for the third quarter of 1998 increased by 35.4% over the third quarter of 1997 due in part to a \$23.6 million increase in private line revenue. The private line increase reflected the impact of the Company's larger network and associated capacity available for lease in 1998. A significant portion of this improvement was from a large capacity contract with one Internet Service Provider ("ISP"). Net operating revenue in the third quarter of 1998 was also affected by a \$15.9 million increase in switched long distance revenue due mainly to a 21.9% increase in wholesale billable minutes of use ("MOU"). A major portion of this increase was due to services provided to a debit card provider during the third quarter. The debit card provider has been a customer for switched long distance services for several years and became a significant customer in the third quarter due to the success of its sale of debit cards. In November 1998, the Company resolved certain billing and payment disputes with the customer and such resolution is expected to result in further significant increases in this customer's MOUs. In light of the dramatic increase in MOUs from this customer, the Company agreed (i) to credit certain of the customer's third quarter billings (which amount was adequately reserved at September 30, 1998) primarily to reflect reduced rates for increased volume; (ii) to decrease its current billing rates to reflect the customer's continuing increase in MOUs and (iii) to accept a secured note for approximately \$16 million payable at the rate of \$250,000 per week for prior services. Net operating revenue in the third quarter of 1998 also included \$9.0 million of other revenue relating to cash received from the sale of an option in certain rights in fibers jointly owned with another carrier. Operating revenue for the first nine months of 1998 increased 39.5% over the first nine months of 1997. That increase of \$141.3 million was mainly due to an increase in switched long distance revenue of \$83.8 million. The improvement in switched long distance revenue for the nine months came from a 33.9% increase in wholesale MOU as well as the increase in the number of retail customers. The private line revenue increase was due to increased demand for capacity, including the large capacity agreement with the ISP, and the availability of additional capacity on the Company's network in 1998.

Cost of services primarily reflects access charges paid to Local Exchange

Carriers ("LEC's") and transmission lease payments (monetary and nonmonetary) to other carriers. These costs for the quarter and year to date increased 8.9% and 17.6% respectively over the comparable 1997 periods. Transmission lease expense for the quarter increased 10.6% over the 1997 quarter related to additional transmission lease expense paid to support the Company's private line and switched long distance businesses in advance of expanding the network's capacity. The increase in the transmission lease expense was mitigated by the Company transferring off-net traffic to its expanding fiber network, and by a greater proportion of new revenue being carried on the Company's network. The increase in access costs was caused by additional wholesale MOU's overflowed to

other carriers and access charges paid to LEC's associated with the additional revenue. The increase in access costs was mitigated by FCC-mandated reductions in unitary (per minute) access costs, net of increased costs related to new tandem trunking charges which were implemented July 1, 1998 and by improved management of costs related to traffic mix and overflow traffic.

The improved revenue and smaller increases in cost of services resulted in gross margin in the third quarter of 1998 of 40.6% compared to 26.2% in the same period in 1997. On a year-to-date basis, the gross margin increased to 34.7% in 1998 compared to 22.5% during the 1997 period.

Operating and administrative costs in the quarter increased \$12.0 million to \$40.1 million, representing 21.6% of revenue versus 20.5% in the prior year's third quarter. The increase was due primarily to additional headcount and other operating costs related to the expanded fiber network and higher sales and administration costs related to expanding the Company's retail sales force. The Company intends to continue to expand the retail sales force and the network; therefore, operating and administration expenses may continue to increase in total and as a percentage of revenue.

Depreciation and amortization increased 52.2% from last year's third quarter and 60.5% for the nine month period, due to an increase in depreciable assets relating to completed segments of the Company's expanding network and capacity available on the network. Depreciation and amortization are expected to continue to rise because of increased spending on assets to add to the network's capacity.

In connection with the Eclipse merger, the Company recorded merger-related costs of \$8.1 million during 1998 related to the execution of the transaction, the write-off of duplicate assets, and the integration of the functions of the two companies. These costs consist of (i) professional services including legal, investment banking and accounting associated with the transaction of \$3.5 million; (ii) severance costs of \$0.6 million from the termination of approximately 125 duplicate administrative and sales positions; (iii) costs of \$1.7 million to terminate leases for duplicate office space; (iv) the write off of \$1.8 million in duplicate equipment and software; and (v) costs of \$0.5 million incurred during the second and third quarters to integrate the business processes. The Company expects to incur \$2.0 to \$4.0 million in additional integration costs during the remainder of 1998. Merger-related costs incurred during 1997 relate to earlier acquisitions by Eclipse.

Interest income increased 50.7% for the first three quarters over the prior year's period due to the additional funds available in 1998 from the issuance of the 6 3/4% Convertible Preferred Stock ("6 3/4% Convertible Preferred Stock") and the \$450 million of 9% Senior Subordinated Notes Due 2008 (the "9% Senior Subordinated Notes") in March and April 1998. Interest income in the third quarter of 1998 was relatively unchanged from the third quarter of 1997 as a result of the use of cash for capital expenditures in 1998.

Interest expense decreased by 5.6% from last year's third quarter to \$7.6 million this quarter. For the first three quarters of 1998, interest expense decreased 7.0% to \$22.4 million from the comparable period in 1997. Interest expense for both the quarter and nine months decreased due to additional capitalized interest relating to increased capital expenditures in 1998.

Equity in net losses of unconsolidated subsidiaries for the third quarter increased \$1.0 million from 1997 to \$8.3 million in 1998. For the nine-month period, equity losses increased \$16.7 million to \$30.3 million in 1998. The increased losses for the quarter relate to the Company's 20% interest in Unidial Communications Services, LLC a retail long distance joint venture and the Company's 40% interest in Storm, a European joint venture. Neither of these investments were in place during the first nine months of 1997. Losses from the Company's indirect interest in Marca-Tel S.A. de C. V. ("Marca-Tel"), a Mexican joint venture which is constructing a fiber network in Mexico and has been

operating since the first quarter of 1997, declined year-over-year for the third quarter due to the increased level of revenue generated by Marca-Tel. Beginning in June 1998 the Company's investment in PSINet, Inc. ("PSINet"), an internet service provider, was reported on a cost basis due to a reduced level of ownership; therefore, no equity results were recorded during the quarter for this investment. The year-over-year increase in equity losses is due to losses from all four unconsolidated subsidiaries. Currently, the Company's investment balance in Marca-Tel is negative and Marca-Tel required minimal funding by the Company in the current quarter. At the present time, the Company does not anticipate significant additional funding to Progress International LLC ("Progress

International") for investment in Marca-Tel until the regulatory and market conditions improve in Mexico. The Company is not obligated to continue to fund Progress International. The Company and the other direct and indirect owners of Marca-Tel are currently in discussions with investment bankers to obtain additional financing for Marca-Tel; however, with the current depressed financing market for companies in emerging markets, it is unlikely that public financing will be available in the near term. Marca-Tel received a notice of default from its major source of current financing in October 1998. Negotiations are in process and the outcome of those discussions is unclear at this time. The default could result in the foreclosure of a third party's security interest in Progress International's interest in Marca-Tel. If that were to occur, the Company's indirect interest in Marca-Tel could be diluted or lost entirely.

Income tax expense increased to \$1.6 million in the current period from \$0.7 million in the prior year's third quarter. For the first nine months of 1998, income tax expense increased to \$8.3 million from \$5.5 million in the first nine months of 1997. These increases are primarily due to state income taxes related to the sale of indefeasible rights to use capacity or fibers on the Company's network and the other operating revenue of \$9.0 million in the third quarter 1998. The deferred tax assets relating to the Company's pretax operating losses have been fully reserved due to the uncertainty of their realization.

In connection with the sale of \$450 million of 9% Senior Subordinated Notes, the Company completed a tender offer to purchase for cash its outstanding 12 1/2% Senior Notes Due 2005. The Company recorded an after-tax extraordinary loss of \$69.6 million relating to the redemption of \$284.2 million of the 12 1/2% Senior Notes Due 2005.

#### LIQUIDITY AND CAPITAL RESOURCES

Historically, private line operations provided adequate cash flow to meet the Company's operational needs. The Company is financing the expansion of its network through the issuance of debt and equity securities.

Cash provided by operating activities was \$127.9 million for the nine months ended September 30, 1998 compared to \$21.7 million in the comparable period of 1997. This change occurred primarily because of payments received relating to indefeasible right to use ("IRU") agreements, other operating revenue, and improved operations in both the private line and switched long distance businesses.

Cash used in investing activities for the nine months ended September 30, 1998 was \$384.2 million compared to \$171.7 million for the comparable period of 1997. The increase is primarily due to an increase in capital expenditures compared to the 1997 period related to building the Company's network. Funding from escrow accounts related to the 12 1/2% Senior Notes Due 2005 provided a net of \$51.4 million during the first nine months of 1997. There was no such activity during 1998. The Company expects that its capital expenditures will continue to require a significant amount of cash through the end of fiscal year 1999 and thereafter. The remaining increase in cash used for investing activities was due to funding certain acquisitions and investments in unconsolidated subsidiaries.

Cash provided by financing activities decreased \$128.1 million as net proceeds from debt and equity financing increased by \$212.8 million but were more than offset by an increase of \$336.8 million in debt repayments principally related to the Company's 12 1/2% Senior Notes Due 2005.

As of September 30, 1998, the Company had \$141.7 million in cash. On October 28, 1998, the Company entered into a \$600 million senior secured credit facility with a syndicate of commercial banks. The Company received funding of \$200 million, net of \$4.2 million of transaction costs. The facility consists of a \$150 million revolving facility, a \$200 million term loan facility, and an uncommitted special purpose loan facility of \$250 million. The Company must



comply with various financial and other covenants on an ongoing basis in addition to meeting the covenants on a pro forma basis prior to drawing additional amounts under the credit facility. Loans outstanding under the credit facility bear interest at either LIBOR or the lead commercial bank's prime rate plus applicable margins.

The Company expects that its primary sources for cash over the next twelve months will be cash on hand, cash generated by operations, proceeds from the credit facility discussed above, proceeds of fiber use sales and the proceeds from any additional debt, vendor and working capital financing the Company may seek. The

Company is in discussions with various investment bankers, vendors and lending institutions regarding substantial additional debt financing for the remainder of 1998 and beyond. The Company seeks to obtain sufficient funding from these sources plus cash receipts from fiber use sales for the following major uses of cash: (i) the network expansion and other capital expenditures; (ii) debt service; (iii) lease payments; (iv) increasing the retail and internet sales forces; (v) funding joint ventures; (vi) working capital, and (vii) dividends on preferred stock. Capital spending in 1998 is projected to be over \$525.0 million, of which \$362.7 million has been spent through September 30, 1998. After 1998, capital expenditures are expected to continue to be substantial. There can be no assurance that the Company will be successful in obtaining the necessary financing to meet its needs. A failure to raise cash would delay or prevent capital expenditures including the construction of the network expansion. The foregoing capital expenditure and cash requirements for 1998 do not take into account any acquisitions that may subsequently occur.

The Company is required to make semi-annual interest payments on its 9% Senior Subordinated Notes and the remaining 12 1/2% Senior Notes. The Company is also required to make principal payments of approximately \$3.7 million on other debt in 1998. The Company is required (except in certain circumstances when the dividend payment can be a payment in kind) to pay quarterly cash dividends on the 7 1/4% Convertible Preferred Stock at an annual rate of 7 1/4%, on the 6 3/4% Convertible Preferred Stock at an annual rate of 6 3/4% and on the Junior Exchangeable Preferred Stock due 2009 (the "12 1/2% Exchangeable Preferred Stock") at an annual rate of 12 1/2%. The Company anticipates that such debt and equity service payments during 1998 will be made from cash on hand, except for the dividends on the 12 1/2% Exchangeable Preferred Stock which are anticipated to be paid in kind with stock dividends.

The Company is required to make minimum annual lease payments for facilities, equipment and transmission capacity used in its operations. In the remainder of 1998, 1999, and 2000, the Company is currently required to make payments of approximately \$1.8 million, \$7.0 million and \$5.9 million, respectively, on capital leases and \$12.7 million, \$19.8 million and \$8.8 million, respectively, on operating leases. The Company expects to incur additional operating and capital lease costs in connection with the expansion of its network and its retail and Internet operations. Additionally, in connection with its network expansion, the Company from time to time enters into various construction and installation agreements with contractors.

The forward-looking statements set forth above with respect to the estimated cash requirements relating to capital expenditures, the Company's ability to meet such cash requirements and the Company's ability to service its debt are based on certain assumptions as to future events. Important assumptions, which if not met, could adversely affect the Company's ability to achieve satisfactory results include that: (i) there will be no significant delays or cost overruns with respect to the network expansion; (ii) the Company's contractors and partners in cost-saving arrangements will perform their obligations; (iii) rights-of-way can be obtained in a timely, cost-effective basis; (iv) the routes of the network expansion are substantially completed on schedule; (v) the Company will continue to increase traffic on its network; and (vi) the Company can obtain vendor or additional debt financing.

#### YEAR 2000 RISKS

The Year 2000 issue is the result of computer software programs being coded to use two digits rather than four to define the year. It is possible that some of the Company's existing computer programs that have date-sensitive coding may recognize a date using "00" as the year 1900 rather than the year 2000. This could result in system failures or miscalculations causing disruption of operations, which could have a material adverse effect on the Company's ability to conduct business after January 1, 2000, including the inability of the Company to provide telecommunications services to its customers or to accurately invoice customers or collect payments.

Substantially all of the Company's network was built in the last three years. As a result, the Company believes that it does not have a significant investment in legacy systems having substantial Year 2000 exposure. However, the Company has established a project team to identify, evaluate and address any existing Year 2000 issues. This Year 2000 effort covers the Company's fiber optic network and supporting infrastructure related to providing switched, private line and data telecommunications services, and other operational and financial information technology ("IT") systems and applications. Also included in this effort are various

other systems such as building operations and individual personal computers used by Company personnel. The project team is reviewing the status of the Year 2000 compliance effort of key suppliers and other business partners, and is developing business continuity plans related to Year 2000 issues. While the Year 2000 project team is evaluating all potentially non-compliant systems, the Year 2000 effort is structured to give priority to those systems identified as "mission critical".

The project team has identified the following principal phases of the project: a) assessment and planning, b) remediation, c) testing, and d) contingency planning. The assessment phase is expected to be substantially complete by December 31, 1998. The Company has established a target date of March 31, 1999, for remediation of mission critical systems. Of the applications identified as critical, many have already been remediated and are being tested. Testing is expected to be completed by September 30, 1999 for all applications. In addition, all new components being purchased as part of the Company's ongoing network and IT infrastructure expansion are being evaluated to ensure compliance.

There can be no assurances that third parties, including customers, suppliers, and other business partners, will convert their critical systems and processes in a timely manner. Such failure by any of these parties could disrupt the Company's business. Therefore, in addition to evaluating its own internal systems, the Company is in the process of evaluating and documenting the status of Year 2000 compliance efforts by its key suppliers.

The Company currently projects that it will incur and expense approximately \$2 million through the end of 2000 in connection with the Year 2000 remediation project, of which less than \$0.5 million has been incurred and expensed as of September 30, 1998. Such amounts are exclusive of amounts which were already anticipated to be spent on new hardware and software purchases resulting from the expansion of the Company's network and other business operations. The Company believes that a significant portion of the Year 2000 expenses will not be incremental costs, but rather will represent the redeployment of existing IT resources. This redeployment may cause delays in making other IT or network upgrades or enhancements; however, the delays are not expected to have a material effect on the Company's operations.

As part of its Year 2000 initiative, the Company is evaluating scenarios that may occur as a result of the century change and anticipates developing contingency and business continuity plans tailored for Year 2000-related problems by December 31, 1998. These plans are expected to provide for key operational back-up, recovery and restoration alternatives.

The above information is based on estimates, which were derived using numerous assumptions of future events, including the availability and future costs of certain technological and other resources, third party modification actions and other factors. Given the complexity of these issues and other unidentified risks, actual results may vary materially from those anticipated and discussed above. Specific factors that might cause such differences include, among others, the availability and cost of personnel trained in this area, the ability to locate and correct all affected computer code, the timing and success of remedial efforts of our third party suppliers and similar uncertainties.

### ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

Not Applicable.

**PART II. OTHER INFORMATION****ITEM 1. LEGAL PROCEEDINGS**

None.

**ITEM 2. CHANGES IN SECURITIES AND USE OF PROCEEDS**

None.

**ITEM 3. DEFAULTS UPON SENIOR SECURITIES**

Not applicable.

**ITEM 4. SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS**

In August 1998, the Corporation furnished an Information Statement to stockholders of the Corporation pursuant to Rule 14c-2 under the Securities Exchange Act of 1934 (the "Exchange Act"), in connection with an amendment (the "Amendment") to the Restated Certificate of Incorporation, as amended (the "Restated Certificate") of the Corporation to (i) provide for an increase in the authorized number of shares of the Corporation's common stock (the "Common Stock"); (ii) effect a two-for-one stock split of the Common Stock; (iii) create a new class of preferred stock; and (iv) eliminate from the Restated Certificate all matters therein with respect to the Corporation's 10% Senior Series 1 Cumulative Redeemable Preferred Stock and 10% Junior Series 3 Redeemable Preferred Stock. The Amendment was approved by the Board and a majority of the outstanding shares of Common Stock by written consent in lieu of a meeting pursuant to Section 228(a) of the Delaware General Corporation Law (the "DGCL"). The Information Statement also served as notice to stockholders of an action taken by less than unanimous written consent as required by Section 228(d) of the DGCL. The Information Statement was mailed on or about August 14, 1998 to persons who were stockholders of record on July 22, 1998.

On September 2, 1998, the Corporation announced that it was postponing the filing of a Certificate of Amendment to the Restated Certificate which would effectuate the Amendment. The Corporation's Board of Directors determined that under current market conditions, it would not be in the best interests of the stockholders of the Corporation to file the Certificate of Amendment to effectuate the Amendment.

In September 1998, the Corporation also furnished an Information Statement to stockholders of the Corporation pursuant to Rule 14c-2 of the Exchange Act in connection with the Corporation's 1998 Stock Plan (the "1998 Plan"). The 1998 Plan was approved by the Board and by a majority of the outstanding shares of Common Stock by written consent in lieu of a meeting pursuant to Section 228(a) of the DGCL. The adoption and approval of the 1998 Plan became effective on October 7, 1998 which, pursuant to Rule 14c-2 under the Exchange Act, was a date at least 20 days following the date on which the Information Statement was mailed to the stockholders of the Corporation. The Information Statement also served as notice to stockholders of an action taken by less than unanimous written consent as required by Section 228(d) of the DGCL. The Information Statement was mailed on or about September 14, 1998 to persons who were stockholders of record on August 5, 1998.

**ITEM 5. OTHER INFORMATION**

On September 2, 1998, the Corporation announced that it was postponing its previously announced two-for-one stock split, the increase in its authorized shares of common stock and the creation of a new class of preferred stock.

The two-for-one stock split and adjustments to the capital structure had a record date of (and were to be effected by the filing of the Certificate of Amendment as described above on) September 4, 1998. The Corporation's Board of

Directors has determined that under current market conditions, it would not be in the best interests of stockholders to file the Certificate of Amendment which would effectuate the two-for-one stock split previously approved by its directors and its stockholders. As a result, the number of authorized, issued and outstanding shares of the Corporation, and the holdings of each individual stockholder, remain unchanged at the present time.

## ITEM 6. EXHIBITS AND REPORTS ON FORM 8-K

## (a) Exhibits.

EXHIBIT NUMBER -----	DESCRIPTION -----
3.1+	Restated Certificate of Incorporation of IXC Communications, Inc., as amended.
3.2	Bylaws of IXC Communications, Inc., as amended (incorporated by reference to Exhibit 3.2 of the IXC Communications, Inc.'s Quarterly Report on Form 10-Q for the quarter ended September 30, 1997 filed with the Commission on November 14, 1997).
4.1	Indenture dated as of October 5, 1995, by and among IXC Communications, Inc., on its behalf and as successor-in-interest to I-Link Holdings, Inc. and IXC Carrier Group, Inc., each of IXC Carrier, Inc., on its behalf and as successor-in-interest to I-Link, Inc., CTI Investments, Inc., Texas Microwave Inc. and WTM Microwave Inc., Atlantic States Microwave Transmission Company, Central States Microwave Transmission Company, Telcom Engineering, Inc., on its behalf and as successor-in-interest to SWIT Company and Microwave Network, Inc., Tower Communication Systems Corp., West Texas Microwave Company, Western States Microwave Transmission Company, Rio Grande Transmission, Inc., IXC Long Distance, Inc., Link Net International, Inc. (collectively, the "Guarantors"), and IBJ Schroder Bank & Trust Company, as Trustee (the "Trustee"), with respect to the 12 1/2% Series A and Series B Senior Notes due 2005 (incorporated by reference to Exhibit 4.1 of IXC Communications, Inc.'s and each of the Guarantor's Registration Statement on Form S-4 filed with the Commission on April 1, 1996 (File No. 333-2936) (the "S-4")).
4.2	Form of 12 1/2% Series A Senior Notes due 2005 (incorporated by reference to Exhibit 4.6 of the S-4).
4.3	Form of 12 1/2% Series B Senior Notes due 2005 and Subsidiary Guarantee (incorporated by reference to Exhibit 4.8 of IXC Communications, Inc.'s Amendment No. 1 to Registration Statement on Form S-1 filed with the Commission on June 13, 1996 (File No. 333-4061) (the "S-1 Amendment")).
4.4	Amendment No. 1 to Indenture and Subsidiary Guarantee dated as of June 4, 1996, by and among IXC Communications, Inc., the Guarantors and the Trustee (incorporated by reference to Exhibit 4.11 of the S-1 Amendment).
4.5	Purchase Agreement dated as of March 25, 1997, by and among IXC Communications, Inc., Credit Suisse First Boston Corporation ("CS First Boston") and Dillon Read & Co. Inc. ("Dillon Read") (incorporated by reference to Exhibit 4.12 of IXC Communications, Inc.'s Quarterly Report on Form 10-Q for the quarter ended March 31, 1997, filed with the Commission on May 15, 1997 (the "March 31, 1997 10-Q")).
4.6	Registration Rights Agreement dated as of March 25, 1997, by and among IXC Communications, Inc., CS First Boston and Dillon Read (incorporated by reference to Exhibit 4.13 of the March 31, 1997 10-Q).
4.7	Amendment to Registration Rights Agreement dated as of March 25, 1997, by and between IXC Communications, Inc. and Trustees of General Electric Pension Trust (incorporated by reference to Exhibit 4.14 of the March 31, 1997 10-Q).

- 4.8 Registration Rights Agreement dated as of July 8, 1997, among IXC Communications, Inc. and each of William G. Rodi, Gordon Hutchins, Jr. and William F. Linsmeier (incorporated by reference to Exhibit 4.15 of IXC Communications, Inc.'s Quarterly Report on Form 10-Q for the quarter ended June 30, 1997, as filed with the Commission on August 6, 1997 (the "June 30, 1997 10-Q")).
- 4.9 Registration Rights Agreement dated as of July 8, 1997, among IXC Communications, Inc. and each of William G. Rodi, Gordon Hutchins, Jr. and William F. Linsmeier (incorporated by reference to Exhibit 4.16 of the June 30, 1997 10-Q).



**EXHIBIT  
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- 4.10 Indenture dated as of August 15, 1997, between IXC Communications, Inc. and The Bank of New York (incorporated by reference to Exhibit 4.2 of IXC Communications, Inc.'s Current Report on Form 8-K dated August 20, 1997, and filed with the Commission on August 28, 1997 (the "8-K")).
- 4.11 First Supplemental Indenture dated as of October 23, 1997, among IXC Communications, Inc., the Guarantors, IXC International, Inc. and IBJ Schroder Bank & Trust Company (incorporated by reference to Exhibit 4.13 of IXC Communications, Inc.'s Annual Report on Form 10-K for the year ended December 31, 1997, and filed with the Commission on March 16, 1998 (the "1997 10-K")).
- 4.12 Second Supplemental Indenture dated as of December 22, 1997, among IXC Communications, Inc., the Guarantors, IXC Internet Services, Inc., IXC International, Inc. and IBJ Schroder Bank & Trust Company (incorporated by reference to Exhibit 4.14 of the 1997 10-K).
- 4.13 Third Supplemental Indenture dated as of January 6, 1998, among IXC Communications, Inc., the Guarantors, IXC Internet Services, Inc., IXC International, Inc. and IBJ Schroder Bank & Trust Company (incorporated by reference to Exhibit 4.15 of the 1997 10-K).
- 4.14 Fourth Supplemental Indenture dated as of April 3, 1998, among IXC Communications, Inc., the Guarantors, IXC Internet Services, Inc., IXC International, Inc., and IBJ Schroder Bank & Trust Company (incorporated by reference to Exhibit 4.15 of IXC Communications, Inc.'s Registration Statement on Form S-3 filed with the Commission on May 12, 1998 (File No. 333-52433)).
- 4.15 Purchase Agreement dated as of March 25, 1998, among IXC Communications, Inc., Goldman Sachs & Co. ("Goldman"), CS First Boston, Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill") and Morgan Stanley & Co. Incorporated ("Morgan Stanley") (incorporated by reference to Exhibit 4.1 IXC Communications, Inc.'s Current Report on Form 8-K dated March 30, 1998, and filed with the Commission on April 7, 1998 (the "April 7, 1998 8-K")).
- 4.16 Registration Rights Agreement dated as of March 30, 1998, among IXC Communications, Inc., Goldman, CS First Boston, Merrill and Morgan Stanley (incorporated by reference to Exhibit 4.2 of the April 7, 1998 8-K).
- 4.17 Deposit Agreement dated as of March 30, 1998, between IXC Communications, Inc. and BankBoston N.A. (incorporated by reference from Exhibit 4.3 of the April 7, 1998 8-K).
- 4.18 Purchase Agreement dated as of April 16, 1998, by and among IXC Communications, Inc., CS First Boston, Merrill, Morgan and Nationsbanc Montgomery Securities LLC (incorporated by reference to Exhibit 4.1 of IXC Communications, Inc.'s Current Report on Form 8-K dated April 21, 1998, and filed with the Commission on April 22, 1998 (the "April 22, 1998 8-K")).
- 4.19 Registration Rights Agreement dated as of April 16, 1998, by and among IXC Communications, Inc., Credit Suisse First Boston Corporation, Merrill, Morgan and Nationsbanc Montgomery Securities LLC (incorporated by reference to Exhibit 4.2 of the April 22, 1998 8-K).
- 4.20 Indenture dated as of April 21, 1998, between IXC Communications, Inc. and IBJ Schroder Bank & Trust Company,

- as Trustee (incorporated by reference to Exhibit 4.3 of the April 22, 1998 8-K).
- 4.21 Rights Agreement dated as of September 9, 1998, between IXC Communications, Inc. and U.S. Stock Transfer Corporation (incorporated by reference to Exhibit 4.1 of IXC Communications, Inc.'s Form 8-K dated September 8, 1998 and filed with Commission on September 11, 1998).
- 10.1 Office Lease dated as of June 21, 1989 with USAA Real Estate Company, as amended (incorporated by reference to Exhibit 10.1 of the S-4).
- 10.2 Equipment Lease dated as of December 1, 1994, by and between DSC Finance Corporation and Switched Services Communications, L.L.C.; Assignment Agreement dated as of December 1, 1994, by and between Switched Services Communications, L.L.C. and DSC Finance Corporation; and Guaranty dated December 1, 1994, made in favor of DSC Finance Corporation by IXC Communications, Inc. (incorporated by reference to Exhibit 10.2 of the S-4).
- 10.3 Amended and Restated 1994 Stock Plan of IXC Communications, Inc., as amended (incorporated by reference to Exhibit 10.3 of the June 30, 1997 10-Q).

**EXHIBIT  
NUMBER**  
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- 10.4 Form of Non-Qualified Stock Option Agreement under the 1994 Stock Plan of IXC Communications, Inc. (incorporated by reference to Exhibit 10.4 of the S-4).
- 10.5 Amended and Restated Development Agreement by and between Intertech Management Group, Inc. and IXC Long Distance, Inc. (incorporated by reference to Exhibit 10.7 of IXC Communications, Inc.'s and the Guarantors' Amendment No. 1 to Registration Statement on Form S-4 filed with the Commission on May 20, 1996 (File No. 333-2936) ("Amendment No. 1 to S-4"))).
- 10.6 Third Amended and Restated Service Agreement dated as of April 16, 1998, among IXC Long Distance, Inc., IXC Carrier, Inc., IXC Broadband, Inc. and Excel Telecommunications, Inc. (incorporated by reference to Exhibit 10.6 of IXC Communications, Inc.'s Quarterly Report on Form 10-Q for the quarter ended March 31, 1998, filed with the Commission on May 15, 1998 (the "March 31, 1998 10-Q"))).
- 10.7 Equipment Purchase Agreement dated as of January 16, 1996, by and between Siecor Corporation and IXC Carrier, Inc. (incorporated by reference to Exhibit 10.9 of the S-4).
- 10.8 1996 Stock Plan of IXC Communications, Inc., as amended (incorporated by reference to Exhibit 10.10 of the IXC Communications, Inc. Annual Report on Form 10-K for the year ended December 31, 1996 and filed with the Commission on March 28, 1997 (the "1996 10-K"))).
- 10.9 IRU Agreement dated as of November 1995 between WorldCom, Inc. and IXC Carrier, Inc. (incorporated by reference to Exhibit 10.11 of Amendment No. 1 to the S-4).
- 10.10+ IXC Communications, Inc. Outside Directors' Phantom Stock Plan 1998 Restatement.
- 10.11 Business Consultant and Management Agreement dated as of March 1, 1998, by and between IXC Communications, Inc. and Culp Communications Associates (incorporated by reference to Exhibit 10.11 of the March 31, 1998 10-Q).
- 10.12 Employment Agreement dated as of December 28, 1995, by and between IXC Communications, Inc. and James F. Guthrie (incorporated by reference to Exhibit 10.14 of the S-1 Amendment).
- 10.13 Special Stock Plan of IXC Communications, Inc. (incorporated by reference to Exhibit 10.16 of the 1996 10-K).
- 10.14 Lease dated as of June 4, 1997, between IXC Communications, Inc. and Carramerca Realty, L.P. (incorporated by reference to Exhibit 10.17 of the June 30, 1997 10-Q).
- 10.15 Loan and Security Agreement dated as of July 18, 1997, among IXC Communications, Inc., IXC Carrier, Inc. and NTFC Capital Corporation ("NTFC") (incorporated by reference to Exhibit 10.18 of the June 30, 1997 10-Q).
- 10.16 IRU and Stock Purchase Agreement dated as of July 22, 1997, between IXC Internet Services, Inc. and PSINet Inc. (incorporated by reference to Exhibit 10.19 of IXC Communications, Inc.'s Amendment No. 1 to Form 10-Q/A for the quarter ended September 30, 1997 filed with the Commission on December 12, 1997 (the "September 30, 1997 10-Q/A"))).
- 10.17 Joint Marketing and Services Agreement dated as of July 22, 1997, between IXC Internet Services, Inc. and PSINet Inc. (incorporated by reference to Exhibit 10.20 of the September 30, 1997 10-Q/A).

- 10.18 Employment Agreement dated as of September 9, 1997, between Benjamin L. Scott and IXC Communications, Inc. (incorporated by reference to Exhibit 10.21 of IXC Communication Inc.'s Amendment No. 1 to Registration Statement on S-4 filed with the Commission on December 15, 1997 (File No. 333-37157) ("Amendment No. 1 to the EPS S-4")).
- 10.19 IXC Communications, Inc. 1997 Special Executive Stock Plan (incorporated by reference to Exhibit 10.22 of Amendment No. 1 to the EPS S-4).
- 10.20 First Amendment to Loan and Security Agreement dated as of December 23, 1997, among IXC Communications, Inc., IXC Carrier, Inc., NTFC and Export Development Corporation ("EDC") (incorporated by reference to Exhibit 10.21 of the 1997 10-K).

**EXHIBIT  
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10.21	Second Amendment to Loan and Security Agreement dated as of January 21, 1998, among IXC Communications, Inc., IXC Carrier, Inc., NTFC and EDC (incorporated by reference to Exhibit 10.22 of the 1997 10-K).
10.22+	IXC Communications, Inc. 1998 Stock Plan.
10.23	Credit Agreement, dated as of October 27, 1998 among the Borrower, NationsBank, N.A., as a Lender and Administrative Agent, NationsBanc Montgomery Securities, LLC, as Lead Arranger, and Credit Suisse First Boston, Goldman Sachs Credit Partners, L.P., EDC and TD Securities (USA), Inc., each as a Lender and Co-Syndication Agent (incorporated by reference to Exhibit 10.1 of IXC Communications, Inc. Current Report on Form 8-K dated October 27, 1998 and filed with the Commission on November 4, 1998).
27.1+	Financial Data Schedule.

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+ Filed herewith.

(b) Reports on Form 8-K.

(1) Form 8-K dated July 29, 1998, and filed with the Commission on July 30, 1998, with respect to two press releases reporting (a) approval of a two-for-one stock split of the Common Stock, an increase in the authorized number of shares of Common Stock and the creation of a new class of preferred stock, and (b) results of operations for the second quarter of 1998.

(2) Form 8-K dated July 30, 1998, and filed with the Commission on July 31, 1998, with respect to a press release announcing the extension of IXC Communications, Inc.'s offer to exchange its 9% Senior Subordinated Notes Due 2008 which have been registered under the Securities Act of 1933 for any and all of its outstanding 9% Senior Subordinated Notes Due 2008 (the "Exchange Offer").

(3) Form 8-K dated July 31, 1998, and filed with the Commission on August 21, 1998, announcing the completion of the acquisition of Eclipse Telecommunications, Inc. (formerly, Network Long Distance, Inc.) and reporting on quarterly results of operations for 1997 and 1998 and certain results of operations for July 1998.

(4) Form 8-K dated August 21, 1998, and filed with the Commission on August 21, 1998, with respect to a press release announcing completion of the Exchange Offer.

(5) Form 8-K dated September 2, 1998, and filed with the Commission on September 3, 1998, with respect to a press release announcing the postponement of the two-for-one stock split of the Common Stock, the increase in the authorized number of shares of Common Stock and the creation of a new class of preferred stock.

(6) Form 8-K dated September 8, 1998, and filed with the Commission on September 11, 1998, announcing the adoption of a stockholder rights plan.

**SIGNATURE**

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

**IXC COMMUNICATIONS, INC.**  
a Delaware corporation

November 9, 1998

By: /s/ JAMES F. GUTHRIE

-----  
James F. Guthrie  
Executive Vice President and  
Chief Financial Officer  
(Duly Authorized Officer and  
Principal Financial Officer

**EXHIBIT B**  
**Copy of Redacted Purchase Agreement**

**PURCHASE AGREEMENT**

Dated January 11, 1999,

by and among

**COASTAL TELECOM LIMITED COMPANY,**  
a Texas limited liability company;

**COASTAL TELEPHONE SERVICES LIMITED COMPANY,**  
a Texas limited liability company;

**COASTAL TELECOM LIMITED COMPANY,**  
an Oklahoma limited liability company;

**COASTAL TELECOM LIMITED LIABILITY COMPANY,**  
a Tennessee limited liability company;

**COASTAL TELECOM LIMITED LIABILITY COMPANY,**  
a Wisconsin limited liability company;

their respective

**MEMBERS**

and

**ECLIPSE TELECOMMUNICATIONS, INC.,**  
a Delaware corporation;

**IXC COMMUNICATIONS, INC.,**  
a Delaware corporation;

**IXC INTERNET SERVICES, INC.,**  
a Delaware corporation

**REDACTED**



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## LIST OF SCHEDULES AND EXHIBITS

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Exhibit 1.2(b)	Promissory Notes
Exhibit 1.2(d)	Warrants
Exhibit 1.3	Payment of Purchase Price
Exhibit 1.4(a)	Resales of Common Stock
Exhibit 1.4(b)	Registration Rights Agreement
Exhibit 1.7	Allocation of Purchase Price
Exhibit 3.2(e)	Employment Agreements

## DISCLOSURE SCHEDULE

## **PURCHASE AGREEMENT**

THIS AGREEMENT is made and entered into as of January 11, 1999, by and among COASTAL TELECOM LIMITED COMPANY, a Texas limited liability company ("Texas Coastal"); COASTAL TELEPHONE SERVICES LIMITED COMPANY, a Texas limited liability company ("Texas Coastal Services"); COASTAL TELECOM LIMITED COMPANY, an Oklahoma limited liability company ("Oklahoma Coastal"); COASTAL TELECOM LIMITED LIABILITY COMPANY, a Tennessee limited liability company ("Tennessee Coastal"); COASTAL TELECOM LIMITED LIABILITY COMPANY, a Wisconsin limited liability company ("Wisconsin Coastal"); the respective members of Texas Coastal, Texas Coastal Services, Oklahoma Coastal, Tennessee Coastal and Wisconsin Coastal, each of which is listed on **Schedule 1** attached hereto (individually a "Seller"; collectively, the "Sellers"), ECLIPSE TELECOMMUNICATIONS, INC., a Delaware corporation (the "Buyer"), IXC COMMUNICATIONS, INC., a Delaware corporation ("IXC") and IXC INTERNET SERVICES, INC., a Delaware corporation ("Internet Services"). Buyer, IXC and Internet Services are collectively hereinafter referred to as the "Buyer Entities." Texas Coastal, Texas Coastal Services, Oklahoma Coastal, Tennessee Coastal and Wisconsin Coastal are hereinafter referred to individually as a "Constituent Entity" and collectively as "Constituent Entities" or the "Company."

### **BACKGROUND**

The Sellers are collectively the owners of an aggregate of 100% of the membership interests in the Company, on a fully diluted basis. The Buyer desires to acquire from the Sellers and the Sellers desire to sell to the Buyer, an aggregate of 100% of the membership interest in the Company, on a fully diluted basis (the "Membership Interests"), on the terms and subject to the conditions set forth herein.

NOW, THEREFORE, the Buyer, the Sellers and the Company, in consideration of the mutual promises hereinafter set forth, do hereby promise and agree as follows:

### **ARTICLE I**

#### **Purchase and Sale of the Membership Interests**

1.1. **Purchase of the Membership Interests.** Subject to the terms and conditions set forth in this Agreement, the Sellers shall sell to the Buyer, and the Buyer shall purchase from the Sellers at the Closing (as defined below), all of the Membership Interests. The number and percentage of the Membership Interests in each Constituent Entity to be transferred by each Seller shall be as set forth opposite such Seller's name on **Schedule 1** attached hereto.

1.2. **Purchase Price.** The Buyer Entities shall pay to Sellers, as consideration for the Membership Interests, the following (collectively, the "Purchase Price"):

(a) Cash, in the amount of \* ;

(b) Promissory Notes of Internet Services in substantially the form of **Exhibit 1.2(b)** attached hereto (the "Notes"), in the aggregate original principal face amount of \*. The aggregate amount of the Notes shall be (i) increased by the amount, if any, by which the Book Value (as defined in Paragraph 1.6, below) exceeds \* (the "Initial Members Equity"), or (ii) decreased by the amount, if any, by which the Book Value is less than the \*.

(c) Shares (the "Common Shares") of Common Stock, \$.01 par value, of IXC (the "Common Stock"), such that the product of the number of Common Shares times Current Market Price (as defined in Paragraph 1.6, below), as of the Closing Date shall equal Twenty-five Million dollars (\$25,000,000). The Buyer shall not be required to deliver any fractional shares of Common Stock, and in lieu thereof, the Buyer shall pay to the Sellers an amount in cash determined by multiplying the Current Market Price by the fractional shares otherwise issued. Notwithstanding the foregoing, the Buyer may elect to deliver cash in lieu of the Common Shares in the amount of Twenty-five Million Dollars (\$25,000,000) in the event the Buyer provides notice to Sellers at least five (5) days prior to the Closing Date of its election.

(d) Stock Purchase Warrants in substantially the form of **Exhibit 1.2(d)** attached hereto (the "Warrants"), which upon the exercise of the Warrants will entitle the Sellers to receive Seventy-five Thousand (75,000) shares of Common Stock of IXC. The Warrants will be exercisable for a period of three (3) years following Closing at an exercise price equal to the greater of (a) forty-five dollars (\$45.00), or (b) the closing price of the Common Stock as of the trading day immediately preceding the Closing.

1.3. Payment of Purchase Price. At the Closing, the Buyer shall:

(a) Pay to the Sellers the cash portion of the Purchase Price by wire transfer of immediately available funds to Sellers in the amounts and pursuant to the wire transfer restrictions set forth on **Schedule 1.3**, to be provided by Sellers prior to Closing, subject to adjustment pursuant to Paragraph 1.2(c), above.

(b) Deliver to the Sellers, the Notes in the respective amounts set forth on **Schedule 1.3**, to be provided by Sellers prior to Closing, as adjusted pursuant to Paragraph 1.5, below.

(c) Deliver to the Sellers or the Key Employees (as defined in Paragraph 3.2(c), below), certificates representing the Common Shares in the respective amounts set forth on **Schedule 1.3**, to be provided by Sellers prior to Closing, subject to adjustment pursuant to Paragraph 1.2(c), above.

(d) Deliver to Sellers, the Warrants in the respective amounts set forth on **Schedule 1.3**, to be provided by Sellers prior to Closing. In the event Key Employees receive Common Shares, as a condition to such receipt, such Key Employees shall make a

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representation and warranty substantially similar to the representation and warranty made by Sellers in Paragraph 4.1.4, below.

1.4. Registration of Common Shares and Warrants. As of the Closing, the resale of the Common Shares and the resale of the Common Stock issuable upon the exercise of the Warrants shall be fully registered pursuant to a registration statement filed by IXC on Form S-3 or such other form as may be reasonably acceptable to Sellers and shall be subject to the resale restrictions set forth on Exhibit 1.4(a). At the Closing, IXC and Sellers shall enter into a Registration Rights Agreement in substantially the form of Exhibit 1.4(b) attached hereto (the "Registration Rights Agreement").

1.5. Purchase Price Adjustment.

(a) The Sellers and the Buyer acknowledge and agree that the exact amount of the Purchase Price will not be known as of the Closing Date and that the amount paid by Buyer to Sellers at the Closing pursuant to Paragraphs 1.2(b) and 1.3, above, is an estimate of the Purchase Price which may need to be adjusted subsequent to the Closing Date on the basis set forth herein. Accordingly, as soon as practicable following the Closing Date, but in no event later than ninety (90) days after the Closing Date, the Sellers' certified public accountants Arthur Andersen (the "Designated Accountants") shall prepare and deliver to the Sellers and the Buyer the Closing Date Balance Sheet (as hereinafter defined) and a statement setting forth the amount of the increase or decrease in the Purchase Price, if any, in accordance with the provisions of Paragraph 1.3(b), above (the "Statement"). For purposes of the preparation of the Closing Balance Sheet any dividends or distributions made pursuant to Paragraph 6.1.3(i) shall be deemed to have been made prior to Closing. The Buyer and its accountants shall have the right to review all records, work papers and calculations of the Designated Accountants related to the Closing Date Balance Sheet. The Buyer shall have thirty (30) days after delivery of the Closing Date Balance Sheet and the Statement in which to notify the Sellers in writing of any discrepancy in, or disagreement with, the items reflected on the Closing Date Balance Sheet or the determination of the amount of the increase or decrease in the Purchase Price, if any, and upon agreement by the Sellers regarding the adjustment requested by the Buyer, an appropriate adjustment shall be made thereto. If the Buyer does not make any objection during such thirty (30) day period, the Closing Date Balance Sheet and the Statement shall be deemed to be accepted in the form presented to the Buyer. If the Sellers do not agree, within twenty (20) days after receipt of notice of the requested adjustment, to make any adjustments timely requested by the Buyer, the disputed items or amounts shall be submitted for review and final determination by Deloitte & Touche (the "Independent Accounting Firm"). The determination by the Independent Accounting Firm shall be made as promptly as practical and shall be binding and conclusive upon the parties hereto for purposes hereof. In connection with the settlement of any dispute by the Independent Accounting Firm, both Buyer and Sellers shall submit to the Independent Accounting Firm the amount of the adjustment to the Purchase Price which each believes to be appropriate. All expenses of the Independent Accounting Firm relating to the engagement of the Independent Accounting Firm shall be borne by the party whose

proposed adjustment amount has the greatest deviation from the amount determined by the Independent Accounting Firm.

(b) If the Purchase Price as finally determined shall be adjusted, the amount of the Notes required to be delivered by Buyer to Seller pursuant to Paragraph 1.2(b), above, shall be adjusted accordingly, with any increase or decrease in the amount of the Notes allocated as set forth on Schedule 1 attached hereto.

1.6. Definitions. For purposes hereof, the following terms shall have the meaning set forth below:

(a) The "Closing Date Balance Sheet" shall mean the balance sheet of the Company on a consolidated basis as of the close of business on the Closing Date prepared in accordance with generally accepted accounting principles applied on a basis consistent with the historical practices of the Company ("GAAP") excluding the effect of the capital contribution by Sellers and Buyer pursuant to Section 1.8, below, the payment of all bonuses contemplated by Section 1.8, appropriate withholding and tax accruals or tax payments in connection therewith, and any other activity taken by or under the direction of the Buyer on the Closing Date outside of the ordinary course of business, but including the Accrued Bonus and Continuing Bonus Accrual (described below).

(b) The "Book Value" shall mean an amount equal to the book value of all assets reflected on the Closing Date Balance Sheet less the book value of all liabilities reflected on the Closing Date Balance Sheet, except the Buyer's Seller Loan shall not be treated as a liability of the Company.

(c) The "Current Market Price" of the Common Stock on any date will be, as of any date of determination, the arithmetic mean of the volume weighted average price of the Common Stock (the "VWAP") on each of the thirty (30) calendar days immediately preceding such date.

1.7. Allocation of Purchase Price. The Purchase Price and the form of consideration constituting the Purchase Price shall be allocated among the Constituent Entities and among the assets of the Constituent Entities as set forth on Exhibit 1.7, to be provided prior to Closing. The parties agree that the sale and purchase of the Membership Interests shall for all purposes, including, without limitation, income tax purposes, be reflected in a manner consistent with such allocation and that each of the parties will file all forms necessary to reflect such allocation consistent with such allocation.

1.8. Bonuses. The Company has agreed to pay certain bonuses to key individuals upon the closing of the transactions contemplated hereunder as more particularly described in Exhibit 1.8 attached hereto ("Closing Bonuses"). \*

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## ARTICLE II

### Conditions Precedent to the Closing

2.1. Conditions Precedent to the Buyer's Obligation. The obligation of the Buyer to consummate the transactions contemplated herein is subject to the satisfaction as of the Closing of each of the following conditions:

(a) Each of the representations and warranties of the Sellers and the representations and warranties of the Company made in this Agreement and the statements contained in the Disclosure Schedule and Exhibits thereto shall be true and correct in all material respects when made and on and as of the Closing Date (as defined below), as though made on and as of the Closing Date, except as amended by the Sellers prior to the Closing as provided in Paragraph 7.2, below, or consented to by the Buyer; the Company and the Sellers shall have performed in all material respects the respective covenants, agreements or obligations of the Company and the Sellers contained in this Agreement required to be performed on or prior to the Closing Date, and the Company and the Sellers shall have delivered to the Buyer a certificate dated as of the Closing Date and signed by an authorized officer of the Constituent Entities, and by the Sellers confirming the foregoing in a form reasonably satisfactory to the Buyer.

(b) The Company or its ultimate parent entity, as the case may be, shall have filed, if required by law, proper pre-merger notification forms with the United States Federal Trade Commission (the "FTC") and the Antitrust Division of the United States Department of Justice (the "DOJ") under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and the rules and regulations promulgated thereunder (the "HSR Act"), and the waiting period following the filing of proper pre-merger notification forms by the Buyer (or its ultimate parent entity) and the Company (or its ultimate parent entity) shall have expired, whether pursuant to early termination or by passage of time.

(c) All consents, licenses, permits, authorizations or approvals from, filings with and notifications to any federal, state, local or other governmental or regulatory body required to be made or obtained by the Company and the Sellers in connection with the consummation of the transactions contemplated by this Agreement or necessary to operate the Company which are specifically noted in the Disclosure Schedule (as hereinafter defined) shall have been made or obtained including, without limitation, requirements under the HSR Act as contemplated by Paragraph 2.1(b), above. All approvals, consents and waivers of third parties required to be obtained by the Company and the Sellers (as specifically noted in the Disclosure Schedule in connection with the consummation of such transactions) shall have been obtained. Notwithstanding the foregoing, in the event Buyer or Sellers believe that a material consent, license, permit, authorization or approval (an "Additional Approval") which is not set forth on the Disclosure Schedule is required prior to the consummation of the transactions described herein, the Buyer or Sellers, as the case may be, shall provide notice (the "Approval Notice") to the other of the need for such Additional Approval and the Sellers shall have sixty (60) days from the date of receipt of the Approval Notice to obtain such Additional Approval. In the event the Sellers do not obtain the Additional Approvals described in the Approval Notice within the applicable

sixty (60) day period described above, the Buyer shall not be obligated to consummate the transactions contemplated herein.

(d) No injunction or order of any court or administrative agency of competent jurisdiction shall be in effect as of the Closing which restrains or prohibits the consummation of the transactions contemplated by this Agreement nor shall any action, suit or proceeding requesting such an injunction or order have been commenced or threatened in writing by a party other than the Buyer.

(e) The Buyer shall have received from Godfrey & Kahn, counsel for the Sellers and the Company, an opinion, dated the Closing Date, in a form reasonably acceptable to the parties.

(f) The Company shall not have suffered or incurred the loss, termination, suspension or adverse modification to, or been threatened with any such loss, termination suspension or adverse modification to, any certificate, license or permit necessary or required for any Constituent Entity to continue, both before and after the Closing Date, to operate and conduct its business in the manner, and in the geographic areas, currently conducted by it as of the date of this Agreement, except such as would not have a Material Adverse Effect (as defined).

(g) The Company and the Sellers shall have delivered to the Buyer the documents, certificates, agreements and instruments required under Paragraph 3.3, below, each in a form reasonably acceptable to Buyer.

(h) The Operating Agreements (as defined in Paragraph 4.1.3, below) shall have been amended by the Sellers to permit the transfer of the Membership Interests pursuant hereto.

(i) The Buyer shall have received evidence that each Constituent Entity has adopted resolutions which terminate all of its tax-qualified retirement plans effective immediately prior to the Closing Date.

(j) \* [additional closing condition redacted]

In the event that any of the foregoing conditions to the Closing shall not have been satisfied prior to July 31, 1999, the Buyer may elect to (i) terminate this Agreement without liability to the Buyer, the Company or the Sellers, provided that any such termination shall be without prejudice to any claims by the Buyer for intentional breach of this Agreement by the Company or the Sellers; or (ii) waive all such unsatisfied conditions and consummate the transactions contemplated herein despite such failure. If the Buyer elects to consummate the transactions contemplated herein, the Buyer shall not have any right to be indemnified under Article IX hereof for any Damages (as defined below) arising out of the failure to satisfy the condition(s) which have been waived in writing.

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2.2. Conditions Precedent to the Company's and the Sellers' Obligation. The obligation of the Company and the Sellers to consummate the transactions contemplated herein is subject to the satisfaction as of the Closing of each of the following conditions:

(a) Each of the representations and warranties of the Buyer Entities made in this Agreement shall be true and correct in all material respects when made and on and as of the Closing Date, as though made on and as of the Closing Date; the Buyer Entities shall have performed in all material respects the covenants, agreements and obligations of the Buyer Entities contained in this Agreement required to be performed on or prior to the Closing; and the Buyer shall have delivered to the Sellers a certificate dated as of the Closing Date and signed by an authorized officer of the Buyer confirming the foregoing.

(b) The Buyer shall have caused its ultimate parent entity to file, if required by law, proper pre-merger notification forms with the FTC and the DOJ under the HSR Act, and the waiting period following the filing of proper pre-merger notification forms by the Buyer and the Company (or its ultimate parent entity) shall have expired, whether pursuant to early termination or by passage of time.

(c) All consents, licenses, permits, authorizations, approvals from, filings with and notifications to any federal, state, local or other governmental or regulatory body required to be made or obtained by the Buyer Entities in connection with the consummation of the transactions contemplated by this Agreement shall have been made or obtained including, without limitation, requirements under the HSR Act as contemplated by Paragraph 2.2(b), above. All approvals, consents and waivers of third parties required to be obtained by the Buyer Entities in connection with the consummation of such transactions shall have been obtained.

(d) No injunction or order of any court or administrative agency of competent jurisdiction shall be in effect as of the Closing which restrains or prohibits the consummation of the transactions contemplated under this Agreement nor shall any action, suit or proceeding requesting such an injunction or order have been commenced by a party other than the Sellers or the Company.

(e) The Buyer shall have delivered to the Sellers the documents, certificates, agreements and instruments required under Paragraph 3.2, below, each in a form reasonably acceptable to Sellers.

(f) A registration statement on Form S-3 or such other form reasonably acceptable to Sellers (the "Registration Statement"), in form reasonably satisfactory to the Sellers, pertaining to the resale by the Sellers of the Common Shares and the shares of Common Stock acquirable upon the exercise of the Warrants shall have been declared effective by the Securities and Exchange Commission (the "SEC") and no stop orders suspending the effectiveness of the Registration Statement shall have been issued and be in effect as of the Closing and no proceedings for that purpose shall have been initiated or be pending or, to the knowledge of the Buyer Entities, be contemplated by the SEC.

In the event that any of the foregoing conditions to the Closing shall not have been satisfied prior to July 31, 1999, the Sellers may elect to (i) terminate this Agreement without liability to the Sellers, the Company or the Buyer, provided that any such termination shall be without prejudice to any claims by the Company or the Sellers for intentional breach of this Agreement by the Buyer; or (ii) waive any such unsatisfied conditions and consummate the transactions contemplated herein despite such failure. If the Sellers elect to consummate the transactions contemplated herein, the Sellers shall not have any right to be indemnified under Article IX, below, for any Damages arising out of the failure to satisfy the condition(s) which have been waived in writing.

### ARTICLE III

#### Closing

3.1. Time and Place of Closing. The closing of the purchase and sale contemplated herein (the "Closing") shall be held at the offices of general counsel of IXC, Austin, Texas, at 10:00 AM local time, on the fifth (5th) business day following the date on which (a) all necessary regulatory approvals required as a result of the transactions contemplated hereby are obtained, including, without limitation, any approval required under the HSR Act, and (b) the Registration Statement has been declared effective by the SEC or at such other time or place as the Company, the Sellers and the Buyer shall mutually agree, provided, that on that day, there shall not be in effect any injunction, temporary restraining order, or other order of a court or governmental or regulatory authority of competent jurisdiction directing that the purchase and sale of the Membership Interests pursuant to this Agreement not be consummated. If such an injunction or order is in effect on that day, the Closing shall take place as soon as practicable after it is no longer in effect. The date on which the Closing shall occur is hereinafter referred to as the "Closing Date."

3.2. Deliveries of the Buyer. At the Closing, the Buyer Entities shall deliver to the Sellers the following:

(a) The payment of the Purchase Price in the manner specified in Paragraph 1.3, above.

(b) A certificate from the Secretary of the Buyer, in a form reasonably satisfactory to the Sellers and their counsel, setting forth the resolutions of the Board of Directors of the Buyer authorizing the execution of this Agreement and all agreements, documents and instruments to be executed and delivered by the Buyer in connection herewith (the "Buyer Ancillary Documents") and the taking of any and all actions deemed necessary or advisable to consummate the transactions contemplated herein or therein.

(c) The certificate of the Buyer required to be delivered pursuant to Paragraph 2.2(a), above.

(d) The Registration Rights Agreement, duly executed by IXC.

(e) Employment Agreements between the Buyer \* (collectively, the "Key Employees"), in substantially the form of Exhibit 3.2(e) attached hereto (the "Employment Agreements"), duly executed by the Buyer.

(f) Copies of the consents, approvals and other documentation required pursuant to Paragraph 2.2(c), above.

(g) An opinion of Buyer's counsel, Riordan & McKinzie, dated the Closing Date, in a form reasonably acceptable to the parties.

(h) Such other documents or instruments as the Sellers may reasonably request.

3.3. Deliveries of the Company and the Sellers. At the Closing, the Company and the Sellers shall deliver to the Buyer the following:

(a) Certificates representing the Membership Interests, duly endorsed in blank or accompanied by an assignment duly executed in blank by the Sellers.

(b) The certificate of the Company and the Sellers required to be delivered pursuant to Paragraph 2.1(a), above.

(c) Resignations of all of the officers, directors, managers and/or governors of the Company and each person who is a trustee, custodian, or authorized signatory under any employee benefit plan, bank account, depository account or safe deposit box of the Company, effective as of the Closing, as designated by the Buyer.

(d) Constructive possession of the complete books and records relating to the business of the Company including, without limitation, minute books, stock ledgers, all keys or articles required for access thereto and the combinations for all safes, vaults and other places of safekeeping or storage of the Company.

(e) A certificate of the Secretary of the Company, in a form reasonably satisfactory to the Buyer and its counsel, setting forth the resolutions of the Management Committee of the Company authorizing the execution of this Agreement and all agreements, documents and instruments to be executed and delivered by the Company or any of the Sellers hereunder (collectively the "Seller Ancillary Documents") and the taking by the Company of any and all actions deemed necessary or advisable to consummate the transactions contemplated herein or therein.

(f) The Registration Rights Agreement, duly executed by the Sellers.

(g) The Employment Agreements, duly executed by each of the Key Employees.

(h) Copies of the consents, approvals and other documentation required pursuant to Paragraph 2.1(c), above.

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(i) Evidence of the payment of the bonuses due and payable to the Key Employees as a result of the Closing.

(j) Such other documents or instruments as the Buyer may reasonably request.

## ARTICLE IV

### Warranties and Representations of the Sellers and the Constituent Entities

4.1. Individual Warranties and Representations of the Sellers. Each of the Sellers hereby individually, but only with respect to such Seller, to the Membership Interests owned by such Seller and the authority of such Seller to consummate the transactions contemplated hereby, warrants and represents to the Buyer Entities, which warranties and representations shall survive the Closing for the period set forth in Paragraph 4.3, below, and shall be subject to the provisions of Paragraph 4.4, below, that, except as set forth in the disclosure schedule attached hereto (hereinafter the "Disclosure Schedule"), the following statements are true on the date hereof:

4.1.1. Title to Membership Interests. Such Seller is the record owner of and has good, valid and marketable title to the respective number of the Membership Interests set forth opposite his, her or its name on **Schedule 1** attached hereto, and at the Closing will deliver to the Buyer good, valid and marketable title to such interests free and clear of all liens, security interests, claims, options, charges, pledges and encumbrances of any kind whatsoever.

4.1.2. Authority.

(a) Such Seller has full right, power, legal capacity and authority to sell, transfer and deliver to the Buyer the full legal and beneficial ownership in the portion of Membership Interests to be sold by such Seller pursuant to this Agreement and to consummate the transactions contemplated herein and in any of the Seller Ancillary Documents to which such Seller is a party.

(b) Each of this Agreement and each of the Seller Ancillary Documents to which such Seller is a party has been duly and validly executed and delivered by such Seller and is the legal, valid and binding obligation of such Seller enforceable in accordance with its terms except as enforceability may be limited by bankruptcy, insolvency, fraudulent conveyance, moratorium, reorganization and other laws generally affecting the rights of creditors and general principles of equity and applicable federal or state laws which may affect the availability of equitable remedies. No action, consent or approval by or filing with any federal, state, municipal, foreign or other court or governmental or administrative body or agency or any other regulatory or self-regulatory body is required in connection with the execution and delivery by such Seller of this Agreement or the Seller Ancillary Documents to the extent such Seller is a party thereto or the consummation by such Seller of the transactions contemplated hereby and thereby other than the pre-merger notification with the FTC and the DOJ under the HSR Act, except for any action, consent or approval, with respect to which a failure to obtain would not reasonably be expected to impair in any material respect the performance by such Seller of such Seller's obligations hereunder. No claim, action, suit, proceeding, arbitration, investigation or inquiry before any federal, state, municipal, foreign or other court or governmental or administrative body or agency, any securities or commodities exchange or any private arbitration tribunal is now pending or, to the Knowledge of such Seller, threatened, against or relating to such Seller which

would have a material adverse effect on the ability of such Seller to consummate the sale of the Membership Interests or the other transactions contemplated by this Agreement or the Seller Ancillary Documents. Neither the execution and delivery by such Seller of this Agreement or any Seller Ancillary Document to which such Seller is a party, nor the consummation of the transactions contemplated hereby and thereby, will breach, violate or constitute an event of default (or an event which with the lapse of time or the giving of notice or both would constitute an event of default) under, give rise to any right of termination, cancellation, modification or acceleration under, or require any consent or the giving of any notice under, any contract or instrument to which such Seller is a party or by which any of such Seller's Membership Interests may be bound.

4.1.3. Operating Agreements. Except for this Agreement, the Seller Ancillary Documents and those certain operating agreements by and among the Sellers and the Constituent Entities listed on Schedule 4.1.3 of the Disclosure Schedule (the "Operating Agreements"), there are no voting trust agreements, powers of attorney, proxies or any other contracts, agreements, arrangements, commitments, plans or understandings, written or oral, restricting or otherwise relating to the voting, dividend rights or disposition of that portion of the Membership Interests owned by such Seller or otherwise granting any person any right in respect of that portion of the Membership Interests owned by such Seller and no restrictions on the transfer of such portion of the Membership Interests presently exist.

4.1.4. Investment Representations. The Notes, Common Shares and Warrants (collectively, the "Buyer's Securities") to be acquired by the Sellers pursuant to this Agreement are being acquired by the Sellers for investment only and not with a view to any public distribution thereof. The Sellers have such knowledge and experience in business matters as to be capable of evaluating the merits and risks in acquiring the Buyer's Securities. The Sellers acknowledge that the Buyer's Securities have not been registered under the Securities Act of 1993, as amended, or the securities laws of any state (collectively, the "Securities Laws"), and have been issued in reliance upon exemptions from the registration requirements of the Securities Laws. The Sellers understand that any transfer or disposition of the Buyer's securities may only be made pursuant to an effective registration under applicable securities laws or pursuant to an exemption from the registration requirements of the Securities Laws. The Sellers understand that any certificates documents representing the Buyer's Securities may bear an appropriate legend consistent with the foregoing.

4.1.5. Regulatory Compliance. Each Constituent Entity and each Seller (i) is operating in compliance in all material respects with all applicable federal and state tariffs, laws, regulations and orders relating to the telecommunications industry (ii) has not received notice of any violations of its tariffs or of laws, regulations and orders from any governmental entity having authority to enforce such tariffs, laws, regulations and orders, including but not limited to, (a) the Communications Act of 1934, as amended by the Telecommunications Act of 1996 and (b) the Telephone Consumer Protection Act of 1991; and (iii) has complied in all material respects with all applicable rules and regulations, including those of the local exchange carriers providing it with access services, in determining and designating the percentage of interest usage ("PIU") in ordering interstate and intrastate access services.

4.2. Warranties and Representations of the Constituent Entities. Each of the Constituent Entities hereby warrant and represent to the Buyer, which warranties and representations shall survive the Closing for the period set forth in Paragraph 4.3, below, and shall be subject to the provisions of Paragraph 4.4, below, that, except as set forth in the Disclosure Schedule, the following statements are true on the date hereof:

4.2.1. Organization and Standing. The Constituent Entity is a limited liability company duly formed, validly existing and in good standing under the laws of the state of its formation. The Constituent Entity has the power and authority to own or lease its properties and to carry on all business activities which it now conducts. The Constituent Entity is duly certified or licensed in each state and jurisdiction where such qualification, certification or licensing is necessary or required for the Constituent Entity to conduct its business and offer communications services. The Disclosure Schedule contains a true, complete and correct list of all states in which the Constituent Entity is qualified to do business as a foreign limited liability company. The organizational minutes and minutes of the most recent meetings ratifying prior actions of the Constituent Entity (a copy of which has been made available by inspection by the Buyer and its representatives) are true, complete and correct in all material respects. The Operating Agreement or other constituent documents of the Constituent Entity (true and complete copies of which have been provided to the Buyer) are true, complete and correct and are in full force and effect without amendment or modification.

4.2.2. Capitalization. The Disclosure Schedule sets forth the capitalization of the Constituent Entity. All of the issued and outstanding membership interests (or other equity interests) of the Constituent Entity are owned beneficially and of record as set forth in Schedule 1. All of the Membership Interests are duly authorized, validly issued and outstanding, fully paid and nonassessable. The Membership Interests have not been issued in violation of, and are not subject to, any preemptive or subscription rights other than as provided in the Operating Agreement. Other than the Operating Agreement and the items described in the Disclosure Schedule, there are no outstanding warrants, options, agreements, subscriptions, convertible or exchangeable securities or other commitments or rights pursuant to which the Constituent Entity is or may become obligated to issue, sell, purchase, return or redeem any of its securities. All of the Membership Interests have been issued in compliance with all applicable federal and state securities laws or in accordance with exemptions therefrom, except where the failure to so comply would not have a Material Adverse Effect. Schedule 1 hereto contains a complete and correct list of all holders of any Membership Interests or other securities of the Constituent Entity. Other than as set forth on the Disclosure Schedule, there are no restrictions imposed by the Operating Agreements, and there are no other agreements, understandings or commitments, which would in any way prohibit the transactions contemplated hereby, except where appropriate consents or waivers have been obtained.



#### 4.2.3. Authorization; No Violations.

(a) The Constituent Entity has full power and authority to execute, deliver and perform this Agreement and the other documents and instruments to be executed and delivered by the Constituent Entity in connection herewith. The execution and delivery of this Agreement by the Constituent Entity and the consummation by the Constituent Entity of the transactions contemplated hereby have been duly approved by the Management Committee of the Constituent Entity, and no other action on the part of the Constituent Entity is necessary to authorize and approve the Constituent Entity's execution and delivery of this Agreement or its consummation of the transactions contemplated hereby. This Agreement has been, and when executed and delivered by the Constituent Entity, the other Seller Ancillary Documents to be executed and delivered by the Constituent Entity will be, duly executed and delivered by the Constituent Entity, and constitutes, or will constitute valid and legally binding agreements of the Constituent Entity enforceable in accordance with their respective terms, except that the enforceability of this Agreement may be limited by bankruptcy, insolvency, fraudulent conveyance, moratorium, reorganization and other laws generally affecting the rights of creditors and general principles of equity and applicable federal or state laws which may affect the availability of equitable remedies.

(b) Except for the requirements of the HSR Act, or otherwise disclosed in the Disclosure Schedule, the execution, delivery and performance of this Agreement by the Constituent Entity and the consummation of the transactions contemplated hereby will not: (i) violate or conflict with any provision of the Operating Agreement or other constituent documents of the Constituent Entity, (ii) breach, violate or (whether immediately or with the lapse of time or the giving of notice or both) constitute an event of default under or an event which would give rise to any right of termination, cancellation, modification, acceleration or foreclosure under, or require any consent of or the giving of any notice to any third party under, any note, bond, indenture, credit facility, mortgage, security agreement, lease, license, franchise, permit or other agreement, instrument or obligation to which the Constituent Entity is a party, or by which the Constituent Entity, or any of their respective material properties or assets may be bound, except in each case for any matter which would not have a Material Adverse Effect (the term "Material Adverse Effect" when used herein shall mean a material adverse change as described in the content of the reference either (A) individually or (B) in the aggregate in the business, properties, financial condition or prospects of the Constituent Entity taken as a whole), (iii) to the Knowledge of the Constituent Entity, violate or conflict with any law, statute, rule, regulation, ordinance, code, judgment, order, writ, injunction, decree, determination, award or other requirement of any court or of any governmental body or agency thereof applicable to the Constituent Entity or by which any of their respective properties or assets may be bound, (iv) violate or conflict with any law, statute, rule, regulation, ordinance, code, judgment, order, writ, injunction, decree, determination, award or other requirement of any court or of any governmental body or agency thereof applicable to the Constituent Entity or by which any of their respective properties or assets may be bound, except for any violation or conflict which would not have a Material Adverse Effect, (v) require any registration or filing by the Constituent Entity with, or any permit, license, exemption,

consent, authorization or approval of, or the giving of any notice by the Constituent Entity to, any governmental or regulatory body, agency or authority, except where the failure to make such registration or filing or obtain such permit, license, exemption, consent, authorization or approval, or to give such notice would not have a Material Adverse Effect, or (vi) result in the creation or imposition of any material lien, charge, or encumbrance of any nature whatsoever upon any of its assets, which lien, charge or encumbrance has not been removed prior to the Closing Date.

Except as set forth on the Disclosure Schedule, none of the execution, delivery or performance of this Agreement or any of the Seller Ancillary Documents, or the consummation of the transactions contemplated hereby or thereby requires any filing with or the consent or approval of any third party, including but not limited to any governmental body or entity other than (a) compliance with applicable securities laws, (b) applications to the Federal Communications Commission and the certain state utility regulatory commissions in states in which the Company offers services (such commissions together with the FCC constitute a "Commission" or the "Commissions"), and (c) notifications to the FTC and the DOJ under the HSR Act.

4.2.4. Litigation and Compliance with Laws. There is no claim, suit, action, investigation, litigation, complaint proceeding (including, without limitation, arbitral proceedings) or other legal or administrative proceeding pending or, to the Knowledge of the Constituent Entity (as hereinafter defined in Paragraph 4.4), threatened against the Constituent Entity and there are no complaints or reviews by any court, governmental department, commission, agency, instrumentality or authority or any arbitrator pending or to the Knowledge of the Constituent Entity, threatened against, relating to or affecting, the Constituent Entity. There is no judgment, order, writ, garnishment, levy, injunction, decree or award (whether issued by a court, an arbitrator, a governmental body or agency thereof or otherwise) to which the Constituent Entity is party, or involving the properties, assets or business of the Constituent Entity, which is unsatisfied or which requires continuing compliance therewith by the Constituent Entity. During the past five years, there has not been nor is there now pending, any claim(s) against any person in his or her capacity as either a director, governor, or officer of the Constituent Entity. To the Knowledge of each Constituent Entity, each Constituent Entity has complied with all existing Laws (as defined) now applicable to its business, as presently conducted, including, without limitation, (a) all environmental laws, and (b) all provisions of Laws relating to labor relations, equal employment practices, fair employment practices, entitlement, prohibited discrimination, terms and conditions of employment, wages and hours, or other similar employment practices or acts, except where the failure to comply with any such Laws would not have a Material Adverse Effect. Except with respect to Taxes (as defined and covered in Paragraph 4.2.10, below), laws relating to employment (which are covered in Paragraph 4.2.13, below), ERISA (as defined and covered in Paragraph 4.2.19, below), and Environmental Laws (as defined and covered in Paragraph 4.2.21, below), the Constituent Entity has not received any written notice that the Constituent Entity has not complied in all material respects with all applicable foreign and domestic laws, statutes, ordinances, codes, rules, regulations, judgments, orders, writs or decrees of any federal, state, local or foreign court or governmental or regulatory body or agency thereof (collectively, "Laws") to which the Constituent Entity may be subject or which are applicable to the operations, businesses or assets of the Constituent Entity. The Constituent Entity has not received any written notice of its violation of any tariffs, laws, regulations or orders from any governmental entity having authority to enforce such tariffs, laws, regulations and orders, including, but not limited to, the Communications Act of 1934 as amended by (a) the Telecommunications Act of 1996 and (b) the Telephone Consumer Protection Act of 1991.

4.2.5. Subsidiaries, Investments. The Constituent Entity has no subsidiaries and does not own, directly or indirectly, any stock, partnership interest, joint venture interest or other security, investment or interest in any other corporation, organization or entity.

4.2.6. Ownership and Use of Tangible Assets.

(a) The Constituent Entity has good title to or leased pursuant to a lease described in the Disclosure Schedule (if required to be set forth therein) all tangible personal property and assets which are material to the operation of the Constituent Entity as currently conducted free and clear of all encumbrances except those which would not have a Material Adverse Effect on the Constituent Entity's ability to use or enjoy beneficial ownership of the personal property or assets.

(b) The Disclosure Schedule contains a complete list and description of all real property owned by the Constituent Entity (the "Owned Real Property"), in each case indicating the entity owning such property. The Disclosure Schedule also contains a complete list and description of all real property leased by the Constituent Entity (collectively, the "Leased Real Property"), in each case indicating the entity leasing such property and the persons or entities from whom such property is being leased. The Owned Real Property and the Leased Real Property are collectively referred to herein as the "Real Property." With respect to all such Owned Real Property, the Constituent Entity has good title in fee simple thereto free and clear of all encumbrances, except (i) as specifically disclosed in the Disclosure Schedule or in any title policy obtained by the Buyer or encumbrances which would not have a Material Adverse Effect, (ii) Taxes not yet due, (iii) easements, rights-of-way and similar covenants and restrictions of record, and (iv) municipal and zoning ordinances. The structures, plants, improvements, systems (including, without limitation, heating, ventilation, air conditioning, electrical, plumbing, fire sprinkler, lighting, elevator and other mechanical systems) and fixtures located in or about each such parcel of Owned Real Property have been maintained in accordance with reasonable maintenance standards generally followed in the industry. All other assets and property used in the business of the Constituent Entity, and all assets and property reflected in the balance sheet included in the Interim Financial Statements or acquired after the date of such balance sheet (other than assets or property sold or otherwise disposed of in the ordinary course of its business subsequent to such date) are in each case free and clear of all security interests, mortgages, pledges, liens, conditional sales, agreements, leases, encumbrances or charges of any nature whatsoever except as set forth in Disclosure Schedule 4.2.11(a)(v). The buildings, machinery and equipment of the Constituent Entity are in good and serviceable condition, reasonable wear and tear excepted. The Leased Real Property is being used by the Constituent Entity in compliance with the terms of its applicable lease.

(c) To the Knowledge of the Constituent Entity, all tangible personal property of the Constituent Entity which is material to the Constituent Entity's operations has been maintained in accordance with reasonable maintenance standards generally followed in the industry and is physically located at or about the places of business of the Constituent Entity. None of such tangible personal property is subject to any agreement, arrangement

or understanding for its use by any person other than the Constituent Entity, the presence of which would have a Material Adverse Effect.

(d) The Disclosure Schedule sets forth a complete and correct list of all tangible personal property leases to which the Constituent Entity is a party which involve annual lease payments of more than \$25,000.00. Each such lease is in full force and effect against the Constituent Entity. All lease payments due to date on any such lease have been paid, and the Constituent Entity is not in default under any such lease. To the Knowledge of the Constituent Entity, there are no disputes or disagreements between the Constituent Entity, on the one hand, and any other party with respect to any such lease.

4.2.7. Patents, Trademarks, and Other Intellectual Property. The Disclosure Schedule contains a list of all issued patents, registered trademarks, trade names and registered copyrights which are owned by the Constituent Entity, all applications, therefor in which the Constituent Entity's has an interest and all other issued patents, registered tradenames and registered copyrights which are licensed by the Company or used in the operation of the Constituent Entity's business (all of such listed intellectual properties being referred to herein as the "Intellectual Properties"). To the extent the Intellectual Properties are valid, the Constituent Entity has the sole right to use such Intellectual Properties free and clear of all encumbrances except as set forth in the Disclosure Schedule. No claims have been asserted or, to the Knowledge of the Constituent Entity, threatened in writing by any person challenging the Constituent Entity's ownership or use of any of the Intellectual Properties which if successful, would have a Material Adverse Effect. To the Knowledge of the Constituent Entity, none of the Intellectual Properties infringes or otherwise violates the rights of others or is being infringed by others in any manner which would have a Material Adverse Effect.

4.2.8. Financial Statements. Included in the Disclosure Schedule are true and correct copies of the audited consolidated financial statements of the Company for the fiscal periods ended December 31, 1996 and December 31, 1997 (the "Historical Financial Statements") and the interim financial statements for the period ended October 31, 1998 (the "Interim Financial Statements" and with the Historical Financial Statements, collectively the "Financial Statements." The Financial Statements are prepared in accordance with the books and records of the Company. The Financial Statements are true, correct and complete in accordance with GAAP, fairly present the financial condition of the Company (as applicable) on such dates, the results of operations and the cash flows for the periods designated therein, and were prepared in accordance with GAAP during the periods covered thereby; subject, in the case of Interim Financial Statements, to appropriate year-end adjustments and omitted disclosures customarily placed in footnotes. There has been no material adverse change in the capitalization, assets or liabilities of the Company since the date of the Interim Financial Statements (the balance sheet included therewith referred to as the "Interim Balance Sheet"), other than changes in the ordinary course of business consistent with past practice.

4.2.9. Conduct Out of Ordinary Course. The Constituent Entity has, since the date of the Interim Balance Sheet, conducted its business in the normal and ordinary course and has not since such date, other than as described in the Disclosure Schedule: (i) other than in the ordinary course of business, mortgaged, pledged or subjected to, or agreed to mortgage, pledge or subject to, any lien, any of the assets or business of the Constituent Entity, except as contemplated in this Agreement, (ii) sold, transferred, leased to others or otherwise disposed of or agreed to sell, transfer, lease or otherwise dispose of any of the assets of the Constituent Entity having an

aggregate value of more than \$500,000.00; (iii) suffered any damage, destruction or loss (whether or not covered by insurance) which would have a Material Adverse Effect; (iv) other than in the ordinary course of business, borrowed, or agreed to borrow, funds in excess of \$1,000,000.00; (v) directly or indirectly paid, or agreed to pay, any severance or termination pay to any employee or otherwise granted any general or specific increase in the salary, commission rate or other compensation payable to any employee, director, independent contractor, governor or officer which was not accrued at such date; (vi) issued, or agreed to issue, any securities of the Constituent Entity; (vii) other than pursuant to Paragraph 6.3, below, declared, paid, made or agreed to declare, pay or make any dividends, distributions, redemptions, equity repurchases or other transactions with respect to any securities of the Company or any Constituent Entity; (viii) had any change in its accounting principles, methods or practices or any change in its depreciation or amortization policies or rates or any change in any assumption underlying or methods of calculating any bad debt, contingency or other reserves related to the business of the Company or any Constituent Entity; (ix) had any change in the relationship or course of dealing with any of any of its suppliers, customers, distributors, lenders or creditors that has had or could reasonably be expected to have a Material Adverse Effect; (x) had any labor disputes or disturbances, other than grievances, or attempts to organize the employees of the Constituent Entity for the purpose of collective bargaining, which have had a Material Adverse Effect; (xi) amended or terminated any contract, permit or other agreement related to its assets or business, or by which it or any of its assets or properties used or useable in connection with its business is subject, except as expressly required by this Agreement provided that the Company may have amended or terminated any contracts, permits or other agreements which have a value in the aggregate of less than \$25,000; (xii) canceled any indebtedness or waived or released any right or claim of the Constituent Entity related in any way to the Constituent Entity's business with an aggregate value in excess of \$100,000; (xiii) made any capital expenditure or incurred any obligation to make any capital expenditure in connection with the conduct of the Constituent Entities Business in excess of an aggregate of \$100,000 or other than in the ordinary course consistent with past practices; (xiv) failed to pay or satisfy when due any material obligation of the Constituent Entity, except where such failure would not have a Material Adverse Effect on the Constituent Entity; (xv) assigned, sold or transferred any of its Intellectual Properties or other intangible assets; (xvi) satisfied or discharged any material lien or paid any material obligation or liability, other than obligations or liabilities incurred in the ordinary course of business, an obligation or liability included in the Interim Balance Sheet, current liabilities incurred since such date in the ordinary course of business, liabilities incurred in carrying out the transactions contemplated by this Agreement and obligations and liabilities under, and pursuant to the terms of, the contracts and agreements listed in the Disclosure Schedule; or (xvii) made any loan to any person or entity other than loans to employees outside the ordinary course of business.

#### 4.2.10. Taxes.

(a) Definitions. For purposes of this Paragraph 4.2.10, the following terms shall have the following meanings:

The terms "Tax" and "Taxes" shall mean and include any and all United States, state, local, foreign income, alternative, minimum, accumulated earnings, personal holding company, franchise, capital stock, profits, windfall profits, gross receipts, sales, use, value

added, transfer, registration, stamp, premium, excise, customs duties, severance, environmental (including taxes under section 59A of the Code, real property, personal property, ad valorem, occupancy, license, occupation, employment, payroll, social security, disability, unemployment, workers' compensation, withholding, or other taxes, assessments, social security obligations, deficiencies, fees, customs duties or other governmental charges from time to time imposed by or required to be paid to any governmental authority (including penalties and additions to tax thereon, penalties for failure to file a return or report, and interest on any of the foregoing).

The term "Tax Return" shall mean and include any return, declaration, report, claim for refund, or information return or statement filed relating to Taxes, including any schedule or attachment thereto, and any amendment thereof.

(b) Warranties and Representations.

(i) All Tax Returns which the Constituent Entity was required to file prior to the date hereof (including, without limitation, sales, payroll, employee withholding, social security and unemployment Tax Returns) have been filed when due and when filed were true, correct and complete in all material respects.

(ii) All Taxes due and owing by the Constituent Entity (whether or not shown on any Tax Return) have been paid and any Taxes that become due and owing by the Constituent Entity before the Closing Date (whether or not shown on any Tax Return) will be paid, other than Taxes which are not delinquent and subject to a late payment penalty.

(iii) All Taxes that the Constituent Entity is required by law to withhold or to collect for payment have been duly withheld and collected, and have been paid or accrued, reserved against and entered on the books of the Constituent Entity.

(iv) There are no liens on any of the assets of the Constituent Entity as a result of any Tax liabilities except for Taxes not yet due and payable.

(v) There is no claim or issue (other than a claim or issue that has been finally settled) concerning any liability for Taxes of the Constituent Entity pending or threatened by any taxing authority.

(vi) There are no agreements or applications by the Constituent Entity for an extension of time for the assessment or payment of any Taxes or for the filing of any Tax Return, or waivers of a statute of limitations by the Constituent Entity or any Subsidiary in respect of Taxes.

(vii) There are no Tax sharing, Tax indemnity or Tax allocation agreements or other similar arrangements with respect to or involving the Constituent Entity.

(viii) Except in Texas, the Constituent Entity is taxed as a partnership for federal, state and local income tax purposes. In Texas, each Constituent Entity is taxed as a partnership for federal income tax purposes and as a corporation for state income tax purposes.

(ix) The Constituent Entity is not a party to any agreement, contract, other arrangement that would result, separately or in the aggregate, in the requirement to pay any "excess parachute payment" within the meaning of Section 280G of the Code which will be in effect following the Closing.

#### 4.2.11. Contracts and Other Agreements.

(a) The Disclosure Schedule sets forth a true and complete list of all of the following to which the Constituent Entity is a party or by which it is bound (collectively, the "Contracts"):

(i) any lease, license or right to use, real or personal property which involves annual expenditures or receipts in excess of \$25,000.00;

(ii) intentionally omitted;

(iii) any license agreement or other agreements of the Constituent Entity providing in whole or in part for the use of any patents, trademarks, trade names, service marks, copyrights, inventions, trade secrets or other proprietary know-how or other intellectual property, whether the Constituent Entity is the licensor or the licensee thereunder, and all settlements, consents or forbearance to sue agreements relating thereto;

(iv) any contract, arrangement or understanding which is material to the business of the Constituent Entity;

(v) any note, bond, indenture, credit facility, mortgage, security agreement or other instrument or document relating to or evidencing indebtedness for money borrowed by, or extensions of credit to, or a security interest or mortgage in the assets of, the Constituent Entity;

(vi) any indemnity or guaranty issued by the Constituent Entity during the past three years (other than customary product warranties provided by the Constituent Entity in the ordinary course of business);

(vii) any contract, arrangement or understanding materially restricting the right, or limiting the freedom of the Constituent Entity to engage in any business activity or compete with any business or in any geographical area;

(viii) any contract, arrangement or understanding by the Constituent Entity to customers or distributors which aggregate in excess of \$25,000 to any one customer or distributor;

(ix) any power of attorney given by the Constituent Entity, which is currently in effect, to any person, firm or corporation for any purpose whatsoever;

(x) any collective bargaining agreements with any unions, guilds, shop committees or collective bargaining groups;

(xi) any contracts or agreements with current officers, other employees, consultants or advisors other than contracts which by their terms are cancelable by the Constituent Entity with notice of not more than 90 days;

(xii) each contract for the future purchase of materials, services, supplies or equipment which (a) has a term in excess of one year or (b) obligates the Constituent Entity to pay, in one installment or in the aggregate over its term or one year, whichever is shorter, an amount in excess of \$10,000;

(xiii) each contract and agreement with Affiliates (as defined below);

(xiv) partnership, joint venture or other arrangements or agreements to which the Constituent Entity is a party; or

(xv) agreements pursuant to which the Constituent Entity acquired (by merger, consolidation or acquisition of stock or assets or otherwise) any corporation, partnership or other business organization, entity or division thereof.

(b) With respect to the Contracts, (i) Each Contract is in full force and effect against the Constituent Entity; (ii) the Constituent Entity is not in default under any Contract which would have a Material Adverse Effect; and (iii) to the Knowledge of the Constituent Entity, there are no disputes or disagreements between the Constituent Entity and any other party with respect to any such Contract which would have a Material Adverse Effect.

4.2.12. Employee Benefit Matters. The Disclosure Schedule sets forth all of the employment or consulting contracts, bonus, deferred or incentive compensation, profit sharing, retirement, vacation, sick leave, medical, dental, vision, accidental death and dismemberment insurance, disability, sick pay, holiday pay, stock purchase, stock bonus, restricted stock, or other stock-based plan or severance plans, programs, arrangements and policies and all "employee pension benefit plans" (as defined in Section 3(2) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA")) or "employee welfare benefit plans" (as defined in Section 3(1) of ERISA) (collectively, the "Plans") sponsored or contributed to by the Constituent Entity or by any trade or business, whether or not incorporated (an "ERISA Affiliate") that together with the Constituent Entity would be deemed a "single employer" within the meaning of Section 414 of the Code ERISA, for the benefit of an employee or former employee of the Constituent Entity or any ERISA Affiliate or an independent contractor or consultant with respect to any such entity. Each such Plan is in compliance, and has been administered in accordance with the applicable provisions of ERISA and the Code and all other applicable laws, rules and regulations and the terms of the Plan, in all material respects. The Constituent Entity and each ERISA Affiliate has fulfilled its obligations under the minimum funding standards of ERISA and the Code with respect to each such Plan and no material accumulated funding deficiency exists with respect to any such Plan. All contributions required to be made with respect to all Plans and the payment of all costs of administering those Plans required to be paid on or prior to the Closing Date have been timely made. All amounts properly accrued to date as liabilities of the Constituent Entity or an ERISA Affiliate under or with respect to each Plan (including administrative expenses and incurred but not reported claims) for the current plan year of the Plan have been recorded on the books of the Constituent Entity or an ERISA Affiliate (whichever is applicable). Except for such actions or inactions that would not result in a material liability, none of the Constituent Entity, any ERISA Affiliate, any Plan, trust or trustee or administrator thereof has (i) engaged in any transaction



prohibited by ERISA or the Code or which would subject the Constituent Entity or an ERISA Affiliate to a material tax or civil penalty thereunder; (ii) breached any fiduciary duty owed by it with respect to the Plans described above; or (iii) failed to file and distribute in a timely and proper manner all reports and information required to be filed or distributed in accordance with ERISA or the Code. Neither the Constituent Entity nor any ERISA Affiliate has incurred any liability to the Pension Benefit Guaranty Corporation (the "PBGC") nor, has the PBGC taken any action to terminate any of the Plans described above. Neither the Constituent Entity nor an ERISA Affiliate is or has been a participating or contributing employer in any multi-employer plan nor has the Constituent Entity or an ERISA Affiliate incurred any withdrawal liability with respect to any multi-employer plan or any liability in connection with the termination or reorganization of any multi-employer plan. The Constituent Entity has delivered to Buyer a true and complete copy of: (a) each Plan and any related funding agreements (e.g., trust agreements or insurance contracts), including all amendments (and the Disclosure Schedule includes a description of any such amendment that is not in writing); (b) the current draft of the Summary Plan Description and Summary of Material Modifications (if applicable) of each Plan; (c) the most recent Internal Revenue Service determination letter (if applicable) for each Plan, which determination letter reflects, except as set forth in the Disclosure Schedule, all amendments that have been made to the Plan; and (d) the two (2) most recent Form 5500s that were filed on behalf of the Plan, including the actuarial report (if applicable). The Internal Revenue Service has issued a favorable determination letter with respect to each Plan that is intended to qualify under Code Section 401(a), and no event has occurred (either before or after the date of the letter) that would disqualify the Plan. Neither the Constituent Entity nor any ERISA Affiliate maintains any Plan that provides (or will provide) medical or death benefits to one or more former employees (including retirees), other than benefits that are required to be provided pursuant to Code Section 4980B or state law continuation coverage or conversion rights. There are no investigations, proceedings, or lawsuits, either currently in progress or reasonably be expected to be instituted in the future, relating to any Plan, by any administrative agency, whether local, state or federal. There are no pending or to the knowledge of the Constituent Entity, threatened lawsuits or other claims (other than routine claims for benefits under the Plan and those relating to qualified domestic relations orders) against or involving (i) any Plan, or (ii) any Fiduciary of such Plan (within the meaning of Section 3(21)(A) of ERISA) brought on behalf of any participant, beneficiary, or Fiduciary thereunder, nor to the knowledge of the Constituent Entity, is there any reasonable basis for any such claim. Neither the Constituent Entity nor any ERISA Affiliate has any intention or commitment, whether legally binding or not, to create any additional Plan, or to modify or change any existing Plan so as to materially increase benefits to participants or the cost of maintaining the Plan. The benefits under all Plans are as represented, and have not been, and will not be, materially increased subsequent to the date documents are provided to Buyer. Except as provided in the Disclosure Schedule, none of the Plans provide any benefits that become payable solely as a result of the consummation of this transaction. None of the persons performing services for the Constituent Entity or any ERISA Affiliate have been improperly classified as independent contractors, leased employees, or as being exempt from the payment of wages for overtime.

4.2.13. Labor Practices. The Constituent Entity's operations are not unionized. Within the last three years the Constituent Entity has not experienced any labor disputes, union organizational attempts or any work stoppage due to labor disagreements in connection with its

business. To the Knowledge of the Constituent Entity, the Constituent Entity is in compliance with all applicable laws respecting employment and employment practices, terms and conditions of employment and wages and hours, the non-compliance with which would not have a Material Adverse Effect. To the Knowledge of the Constituent Entity, the Constituent Entity is not engaged in any unfair labor practices. There is no unfair labor practice charge or complaint pending against the Constituent Entity. There is no labor strike, dispute, request for representation, slowdown or stoppage pending against or affecting the Constituent Entity. No grievance which might have a Material Adverse Effect on the Constituent Entity, nor any arbitration proceeding arising out of or under collective bargaining agreements, is pending against the Constituent Entity. There are no administrative charges or court complaints against the Constituent Entity concerning alleged employment discrimination or other employment related matters pending before the U.S. Equal Employment Opportunity Commission or any state or federal court or agency.

4.2.14. Brokers; Agents. The Constituent Entity has not dealt with, retained, employed or used any agent, finder, broker or other representative in any manner which could result in the Constituent Entity or the Buyer Entities being liable for any fee or commission in the nature of a finder's fee or originator's fee in connection with the subject matter of this Agreement \*.

4.2.15. Permits and Licenses. The Constituent Entity has not received any written notice of, and the Constituent Entity does not have any knowledge of, any intention on the part of any government authority to cancel, revoke or modify any permit, license, exemption, franchise, qualification, rights-of-way, easement, municipal and other approval, authorization, order, consent and other right from, and filing with, any government authority of any jurisdiction worldwide relating to the conduct of the Constituent Entity's business (collectively, "Permits"), which cancellation, avocation or modification would have a Material Adverse Effect. All Permits are in full force and effect. The Disclosure Schedule contains a true, complete and correct list of all Permits which are necessary for the lawful operation of the business of each Constituent Entity.

4.2.16. Material Suppliers of Inventories. The Disclosure Schedule sets forth a complete and correct list of all written supply contracts between the Constituent Entity and each supplier of goods and services to the Constituent Entity who provided goods and services to the Constituent Entity which involved an aggregate value of \$100,000.00 or more during the year ended December 31, 1997 with such supplier. The Disclosure Schedule also correctly identifies all currently outstanding purchase orders of the Constituent Entity for goods or services with an aggregate value of \$100,000.00 or more. No supplier identified in the Disclosure Schedule has given the Constituent Entity any notice terminating, suspending or reducing in any material respect, or specifying an intention to terminate, suspend or reduce in any material respect, or otherwise reflecting a material adverse change in, the business relationship between such supplier and the Constituent Entity.

4.2.17. Insurance. The Disclosure Schedule contains a complete and correct list of all material insurance policies carried by, or covering, the Constituent Entity with respect to its businesses, together with, in respect of each such policy, the name of the insurer, the policy number, the expiration date thereof and each pending claim thereunder Known to the Constituent Entity. Complete and correct copies of each such policy have previously been provided to the Buyer. No written notice of cancellation has been received by the Constituent Entity with respect

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\* Confidential information

to any such policy. To the Knowledge of the Constituent Entity, (i) all premiums due thereon have been paid in a timely manner and (ii) the Constituent Entity has complied in all material respects with the terms and provisions of such policies. To the Knowledge of the Constituent Entity, the Constituent Entity has not been refused any insurance with respect to any aspect of the operations of the business nor has its coverage been limited by any insurance carrier to which it has applied for insurance or with which it has carried insurance during the last three years. There is no claim by the Constituent Entity pending under any such policies as to which coverage has been questioned, denied or disputed by the underwriters of such policies.

#### 4.2.18. Environmental Matters.

(a) For purposes of this Paragraph 4.2.18, "Environmental Laws" shall mean (i) all Federal, state or local statutes, regulations, ordinances, orders or decrees regulating or otherwise affecting the environment and/or the disposal of Hazardous Waste or other Hazardous Materials (as hereinafter defined) and (ii) The Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986; the Emergency Planning and Community Right-to-Know Act; the Resource Conservation and Recovery Act; the Hazardous Materials Transportation Act of 1974; the Federal Water Pollution Control Act; the Clean Air Act; the Federal Insecticide, Fungicide and Rodenticide Act; the Safe Drinking Water Act; the Toxic Substances Control Act; the Oil Pollution Act of 1990; any laws regulating the use of biological agents or substances including medical or infectious wastes, each as amended or supplemented through the date hereof.

(b) Operations of the Constituent Entity conducted at the Owned Real Property, the Leased Real Property, any of the Constituent Entity's previously owned real property and any real property previously leased, licensed or otherwise occupied by the Constituent Entity (each a "Site") at all times during such ownership, lease, license or occupation complied in all material respects with Environmental Laws (as defined below), except for noncompliance that would not have a Material Adverse Effect. The Owned Real Property occupied by the Constituent Entity in connection with its business or operations thereon are not subject to (i) any federal, state, or local investigation, (ii) any judicial or administrative proceeding alleging the violation of or liability under any Environmental Law, or (iii) any outstanding written order or agreement with any governmental authority or private party relating to any Environmental Law. Neither the Constituent Entity nor, to the knowledge of the Constituent Entity, has any prior owner or operator of any of the Real Property has used any such Real Property for the disposal of Hazardous Waste or Hazardous Materials. As used in this Paragraph 4.2.18, the term "Hazardous Materials" or "Hazardous Waste" means any hazardous or toxic substances, materials and wastes listed in the United States Department of Transportation Hazardous Materials Table (49 CFR 172.101) or by the United States Environmental Protection Agency (the "EPA") as a hazardous substance (40 CFR Part 302) and amendments thereto, or such substances, materials and wastes which are regulated under any applicable local, state or Federal law, including without limitation, any material waste or substance which is: (i) petroleum; (ii) asbestos; (iii) polychlorinated biphenyls; (iv) defined as a "hazardous waste," "extremely hazardous waste," "restricted hazardous waste" or "hazardous material" under applicable

state laws and regulations; (v) designated as a "hazardous substance" pursuant to Section 311 of the Clean Water Act, 33 U.S.C. § 1251, et seq. (33 U.S.C. § 1321) or U.S.C. § 1317; (vi) defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, et seq. (42 U.S.C. § 6903); or (vii) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. Section 9601, et seq. (42 U.S.C. Section 9601).

(c) During the course of any activities conducted on any of the Real Property by the Constituent Entity, and, to the Knowledge of the Constituent Entity, during the course of activities conducted on the Real Property by any prior owner or operator of any of the Real Property, no Hazardous Waste or Hazardous Materials have been generated or are being used on any such properties, except in accordance with applicable Environmental Laws.

(d) The Constituent Entity has not received notice from any third party including, without limitation, any Federal, state or local governmental authority: (a) that the Constituent Entity has been identified by the EPA as a potentially responsible party under CERCLA with respect to a site listed on the National Priorities List, 40 C.F.R. Part 300 Appendix B (1986); (b) that any Hazardous Waste or Hazardous Materials which the Constituent Entity has generated, transported or disposed of has been found at any site at which a Federal, state or local agency or other third party has conducted or has ordered that the Constituent Entity conduct a remedial investigation, removal or other response action pursuant to any Environmental Law; or (c) that the Constituent Entity is or shall be named a party to any claim, action, cause of action, complaint (contingent or otherwise), legal or administrative proceeding arising out of any third party's incurrence of costs, expenses, losses or damages of any kind whatsoever in connection with the release of Hazardous Waste or Hazardous Materials.

(e) The Constituent Entity has been issued, and will maintain until the Closing Date, all required Federal, state and local permits, licenses, certificates and approvals with respect to the Real Property relating to (a) air emissions; (b) discharges to surface water or groundwater; (c) noise emissions; (d) solid or liquid waste disposal; and (e) the use, generation, storage, transportation or disposal of Hazardous Materials or Hazardous Waste, except where the failure to obtain or maintain any such permits, licenses, certificates and approvals would not, either individually or in the aggregate, have a Material Adverse Effect.

4.2.19. Transactions with Affiliated Parties. Set forth in the Disclosure Schedule is a true and complete list and description of all transactions in excess of \$10,000 engaged in between any Constituent Entity and any Seller, or any director, manager, governor, officer, employee, stockholder, partner or member of any Constituent Entity, or any of their respective spouses or children, any trust of which any such person is the grantor, trustee or beneficiary, any corporation of which any such person or party is a stockholder, employee, governor, manager, officer or director, or any partnership or other person in which any such person or party owns an interest (each such person or entity is referred to as an "Affiliate").

4.2.20. Receivables. All receivables of the Company which are reflected in the Interim Financial Statements, and all such receivables which have arisen since the date of the Interim

Balance Sheet, have arisen only from bona fide transactions in the ordinary course of its business. To the Knowledge of the Constituent Entity, there are no facts or circumstances which would result in any material increase in the uncollectability of such receivables as a class in excess of the reserves therefor set forth on the Interim Financial Statements.

4.2.21. Banks. The Disclosure Schedule contains a correct and complete list setting forth the name of each bank in which any Constituent Entity has an account, line of credit, credit facility or safe deposit box, the names of all persons authorized to draw thereon or to have access thereto, and the name of each person holding a power of attorney from any Constituent Entity.

4.2.22. Conflicts of Interest. Except as set forth on the Disclosure Schedule, none of the Sellers nor any director, officer, governor or employee of any Constituent Entity or any relative of any of them has (a) loaned to or guaranteed the loan of a third party to any Constituent Entity or borrowed any money from any Constituent Entity or (b) any interest in any property, real or personal whether owned or leased, tangible or intangible, including but not limited to, software, inventions, patents, trade names or trademarks used in connection with or pertaining to the business of any Constituent Entity or any lender, supplier, customer, sales representatives or distributor of any Constituent Entity; provided, however, that such director, officer, governor or employee or relative thereof shall not be deemed to have such interest solely by virtue of the ownership of less than five percent of any stock or indebtedness of any publicly held company, the stock or indebtedness of which is traded on a recognized stock exchange.

4.2.23. Letters of Agency. All customer letters of agencies ("LOAs") of each Constituent Entity as of the date of the Interim Financial Statements were obtained in accordance with applicable law and were valid as of such date, except where the failure would not have a Material Adverse Effect, including any Material Adverse Effect resulting from actions which may be taken by any regulatory authority with respect to such failure.

4.2.24. No Undisclosed Liabilities. As of the date of the Interim Balance Sheet, except with respect to the change of control bonuses payable to the Key Employees, the Constituent Entity has not had any material liabilities, known or unknown, absolute or contingent, which are not shown on the Interim Financial Statements. As of the date of the Closing Balance Sheet, except with respect to the control bonuses payable to Key Employees, the Constituent Entity has not had any material liabilities, known or unknown, absolute or contingent, which are not shown on the Closing Date Balance Sheet.

4.3. Warranties Survive Closing. The respective warranties and representations of each Constituent Entity and the Sellers herein contained shall be true and correct on the date hereof and on the Closing Date, and shall survive the Closing for a twenty-four (24) month period following the Closing Date except all representations and warranties with respect to tax matters shall survive the Closing Date until ninety (90) days after the later of: (i) the final settlement of any alleged tax deficiencies, or (ii) the expiration of the applicable statute of limitations, together with any extensions or waivers thereof approved by the Sellers (each, a "Survival Date"); provided, however, that if the Buyer provides written notice to each Constituent Entity and the Sellers as specified in Paragraph 9.3, below, of any claim for which the Buyer seeks indemnification pursuant to Article IX, below, prior to the applicable Survival Date, the claim so made shall survive the Closing until resolved. Any claim not so made in writing prior to the

applicable Survival Date shall be deemed to have been waived by the Buyer and no other party shall have further liability therefor. Notwithstanding the above there shall be no time limit on claims or actions brought for breach of any warranty or representation made in Paragraph 4.1, above.

4.4. Knowledge. For each of those warranties and representations which is made in Paragraph 4.1 and which is subject to the qualification "to the Knowledge of such Seller," such warranty and representation shall be deemed limited to those matters of which the Seller who is making such warranty or representation has actual knowledge. For those warranties and representations which are made in Paragraph 4.2 and which are subject to the qualification "to the Knowledge of the Constituent Entity," "to the Constituent Entity's Knowledge," or similar words or phrases, such warranties and representations shall be deemed limited to those matters of which any of the people set forth on Schedule 4.4 have actual knowledge.

## ARTICLE V

### Warranties and Representations of the Buyer

5.1. Warranties and Representations. Each of the Buyer Entities hereby individually, but only with respect to such Buyer Entity, warrants and represents to the Sellers, which warranties and representations shall survive the Closing for the period set forth in Paragraph 5.2, below, as follows:

5.1.1. Authority. The Buyer is a corporation duly organized and validly existing under the laws of the State of Delaware and has the power and authority to carry on all business activities which it currently conducts. The Buyer has the corporate power and authority to execute and deliver this Agreement and the Buyer Ancillary Documents and to consummate the transactions contemplated hereby and thereby. The execution and delivery of this Agreement and the Buyer Ancillary Documents by the Buyer and the consummation of the transactions contemplated hereby and thereby by the Buyer have been approved by all necessary corporate action on behalf of the Buyer and are and shall constitute valid and legally binding obligations of the Buyer, enforceable against the Buyer in accordance with their respective terms except as enforceability may be limited by bankruptcy, insolvency, fraudulent conveyance, moratorium, reorganization and other laws generally affecting the rights of creditors and general principles of equity and applicable federal and state laws which may affect the availability of equitable remedies. The execution and delivery of this Agreement and the Buyer Ancillary Documents by the Buyer does not, and the consummation of the transactions contemplated hereby and thereby and compliance with the terms hereof and thereof by the Buyer will not (a) conflict with, or result in any breach or violation of (i) any provision of the Articles of Incorporation or By-Laws of the Buyer or (ii) any law, statute, rule, regulation, ordinance, code, judgment, order, writ, injunction, decree, determination or award applicable to the Buyer, or (b) violate or conflict with, or result in a breach under, any agreement, instrument or document to which the Buyer is a party or is subject, except for any breach, violation or default which would not adversely affect the ability of the Buyer to consummate the purchase of the Membership Interests or the other transaction contemplated by this Agreement or the Buyer Ancillary Documents. No consent, approval, order or authorization of, or registration, declaration or filing with, any court, governmental authority or instrumentality or other third party is required to be obtained or made in connection with the execution and delivery of this Agreement or the Buyer Ancillary Documents by the Buyer or the consummation by the Buyer of the transactions contemplated hereby and thereby other than the

consent of Nations Bank pursuant to a Loan and Security Agreement dated as of May 30, 1996, as amended (or any amendment thereto or any new agreement with Nations Bank), and the pre-merger notification with the FTC and DOJ under the HSR Act, except for any action, consent or approval, with respect to which a failure to obtain would not reasonably be expected to impair in any material respect the performance by Buyer of Buyer's obligations hereunder. No claim, action, suit, proceeding, arbitration, investigation or inquiry by any federal, state, municipal, foreign or other court or governmental or administrative body or agency, any securities or commodities exchange or any private arbitration tribunal is now pending or, to the Knowledge of the Buyer, threatened, against or relating to the Buyer which would adversely affect the ability of the Buyer to consummate the purchase of the Membership Interests or the other transactions contemplated by this Agreement or the Buyer Ancillary Documents.

5.1.2. Investment Representations. The Membership Interests to be purchased by the Buyer pursuant to this Agreement are being acquired by the Buyer for investment only and not with a view to any public distribution thereof. The Buyer has such knowledge and experience in business matters as to be capable of evaluating the merits and risks in purchasing the Membership Interests. The Buyer acknowledges that the Membership Interests have not been registered under the Securities Laws, and have been issued in reliance upon exemptions from the registration requirements of the Securities Laws. The Buyer understands that any transfer or disposition of the Membership Interests may only be made pursuant to an effective registration under applicable Securities Laws or pursuant to an exemption from the registration requirements of the Securities Laws. The Buyer understands that any certificates representing the Membership Interests may bear an appropriate legend consistent with the foregoing.

5.1.3. Brokers; Agents. The Buyer has not dealt with any agent, finder, broker or other representative in any manner which could result in the Sellers or the Constituent Entities being liable for any fee or commission in the nature of a finder's or originator's fee in connection with the subject matter of this Agreement or the Buyer Ancillary Documents.

5.1.4. Reports and Financial Statements. Since December 31, 1997, to the extent Buyer has been required to make filings under the Securities Act of 1933, as amended (the "Securities Act"), the Securities Exchange Act of 1934, as amended (the "Exchange Act") or applicable state laws and regulations, Buyer has filed with the SEC or the applicable state regulatory authority, as the case may be, all forms, statements, reports and documents (including all exhibits, amendments and supplements thereto) required to be filed by it under each of the Securities Act, the Exchange Act and applicable state laws and regulations, and the respective rules and regulations thereunder, all of which complied in all material respects with all applicable requirements of the appropriate act and the rules and regulations thereunder. Buyer has previously delivered to the Company true and complete copies of its (a) Annual Report on Form 10-K for the fiscal year ended December 31, 1997, as filed with the SEC, which includes the audited consolidated financial statements of Buyer for the fiscal year then ended (the "Buyer Financial Statements"), (b) proxy and information statements relating to all meetings of its shareholders (whether annual or special), and actions by written consent in lieu of a shareholders' meeting, from December 31, 1997 until the date hereof, (c) all other reports or registration statements filed by Buyer with the SEC since December 31, 1997 (collectively, the "Buyer SEC Reports"). As of their respective dates, the Buyer SEC Reports did not contain any untrue statement of a material fact or omit to state a material fact

required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading except as such statement or omission was stated or corrected in a subsequent filing under the Securities Act or the Exchange Act prior to Closing. The audited consolidated financial statements and unaudited interim financial statements of Buyer included in the Buyer SEC Reports and the Buyer Financial Statements have been prepared in accordance with generally accepted accounting principles consistently applied (except as may be indicated therein or in the notes thereto) and fairly present in all material respects the financial position of Buyer and its subsidiaries as of the dates thereof and the results of their operations and changes in financial position for the periods then ended, subject, in the case of the unaudited interim financial statements, to normal year-end and audit adjustments and the absence of explanatory footnotes.

5.2. Warranties Survive Closing. The warranties and representations of the Buyer herein contained shall be true and correct on the date hereof and on the closing date and shall survive the Closing for a twenty-four (24) month period following the Closing Date; provided, however, that if the Seller's provide written notice to the Buyer as specified in Paragraph 9.3, below, of any claim for which the Seller's seek indemnification pursuant to Article IX, below, prior to the expiration of such twenty-four (24) month period, the claims so made shall survive the Closing until resolved. Any claim not so made in writing prior to twenty-four (24) months subsequent to the Closing Date shall be deemed to have been waived by the Sellers and no other parties shall have further liability therefor. Notwithstanding the above there shall be no time limit on claims or actions brought for breach of any warranties or representations made in paragraphs 5.1.1 and 5.1.2, above.



## ARTICLE VI

### Covenants

6.1. Covenants of the Company. The Company covenants and agrees as follows:

6.1.1. Access. Prior to the Closing, the Company will (i) give the Buyer and its representatives, employees, counsel and accountants reasonable access to the properties, books and records of the Company, (ii) furnish the Buyer and its designated representatives with financial and operating data and other information with respect to the Company for the purpose of permitting the Buyer, among other things, to (a) conduct its due diligence review, (b) review the financial statements of the Company and (c) prepare for the consummation of the transactions contemplated by this Agreement, and (iii) provide to Buyer correct and complete copies of each written Contract (and any amendments thereto). Without limiting the foregoing, the Sellers and the Company will permit the Buyer and its counsel and accountants to have access during normal business hours to examine and make copies of all work papers and schedules of the Company and its accountants. In connection therewith, the Buyer shall be permitted to discuss the business affairs and financial statements of the Company with the Company's counsel and accountants, to review the work papers of such accountants regarding the Company, and in the presence of management of the Company and after prior consultation with such management, to interview the employees of the Company regarding continued employment and to discuss with the appropriate employees of the Company such matters regarding the business and assets of the Company as the Buyer may deem necessary or appropriate. The Buyer and the Company agree that nothing in this Agreement shall be interpreted or construed as limiting, waiving, terminating or otherwise affecting those Confidentiality Agreements between Buyer and the Company dated July 14, 1998. The Buyer and the Company acknowledge that the terms of such Confidentiality Agreements remain in full force and effect. Notwithstanding anything herein to the contrary, any information learned or deemed to be learned by any of the Buyer Entities in their due diligence or pursuant to this Section 6.1.1 shall not limit or reduce their right to the indemnity of Article IX with respect to the breach of any of the representations and/or warranties of any of the Sellers or any Constituent Entity in this Agreement. In the event, at any time prior to Closing, Buyer receives notice from a third party of information that Buyer believes indicates that the Sellers are in breach of any representation or warranty in this Agreement, Buyer shall give immediate notice to the Sellers, who shall then have the opportunity to cure any such breach prior to Closing. In the event Buyer fails to provide Sellers with such notice, the Buyer shall be prohibited from receiving, and the Sellers shall not be required to provide, any indemnification from claims arising therefrom.

6.1.2. Records. On the Closing Date, the Company will deliver to the Buyer all original records relating to the Company which are in the possession of any of the Sellers, provided that the Sellers shall have the right to make copies of any and all materials which they may deem necessary and shall have the continual right to have access to such records in accordance with Paragraph 6.2.2, below.

6.1.3. Conduct of the Business of the Company. The Company and the Sellers covenant and agree that, between the date hereof and the Closing Date (except as otherwise agreed in writing by the Buyer):

(a) the business of the Company will be conducted in the ordinary course consistent with past practice;

(b) other than as required by Paragraph 2.1(h), above, no change will be made in the Operating Agreements;

(c) the Company will use reasonable efforts to keep available the services of its employees and to preserve the goodwill of the customers, suppliers and others having business relationships with the Company;

(d) the Company shall promptly advise the Buyer in writing of the commencement or threat of any suit, proceeding or investigation against, relating to or involving the Company or which could otherwise affect the assets or the businesses of the Company and which in each case would, if determined adversely to the Company, have a Material Adverse Effect, whether or not covered by insurance;

(e) the Company shall advise the Buyer of (i) any material adverse change in the assets, liabilities or financial condition of the Company and (ii) in any event, any condition or state of facts which results in the failure to satisfy any of the conditions of the Buyer's obligations hereunder;

(f) the Company shall not create or permit to become effective any encumbrances on the assets of the Company other than encumbrances created in the ordinary course of business;

(g) the Company will maintain its current liability, casualty, property and other insurance coverage in full force and effect;

(h) the Company will not issue any debt securities or any additional shares of capital stock or Membership Interests or any options, warrants or other rights to purchase, or securities convertible into or exchangeable for, shares of capital stock or Membership Interests of the Company (except as described in the Disclosure Schedule);

(i) the Company will not declare or pay any dividends on or make any distributions (however characterized) in respect of its membership interests, except dividends in the ordinary course or distributions in order to pay the income taxes of Sellers with respect to income of the Company during the period between October 1, 1998 and the Closing attributed to Sellers by reason of the Constituent Entities status as a partnership under the Code;

(j) the Company will not repurchase, redeem, retire or otherwise acquire any shares of its membership interests or split, combine or reclassify its outstanding shares of its Membership Interests;

(k) the Company will not make any change in the accounting principles or practices reflected in the Interim Financial Statements other than as required by GAAP or in the Company's methods of applying such principles or practices, or in the credit criteria utilized by them in connection with its businesses; and

(l) the Company shall not, directly or indirectly, (i) incur any indebtedness for borrowed money, (ii) waive, release, grant or transfer any rights of material value, except in the ordinary course of business, (iii) transfer, lease, License, sell, mortgage, pledge, dispose of, or encumber any asset of the Company with a value exceeding \$10,000 individually, and/or \$50,000 in the aggregate, (iv) purchase or acquire any material interest in any business or any securities or assets of a business, (v) enter into any joint venture or partnership, (vi) settle any material litigation, or (vii) accelerate payments on any indebtedness;

(m) the Company will not, directly or indirectly, (i) increase the compensation payable or to become payable by it to any of its employees, officers, directors, governors, managers or consultants, (ii) adopt any additional, or make any payment or provision with respect to any, or otherwise amend any, other than as required by existing plans or agreements in the ordinary course of business and consistent with past practice, stock option, bonus, profit sharing, pension, group insurance, severance pay, deferred compensation or other payment or employee compensation plan for the benefit of employees of the Company, (iii) grant any stock options or stock appreciation rights, (iv) enter into any new, or alter or amend any employment severance, consulting or other compensation agreement with any director, governor, manager, officer, employee or affiliate of the Company, (v) make any loan or advance to, or enter into any written contract, lease or commitment with, any officer, governor, manager, employee or director of the Company, or (vi) enter into any transactions with any affiliate of the Company other than as contemplated by this Agreement;

(n) capital expenditures (or commitments to make such expenditures which are not terminable at the option of the Company) shall be incurred by the Company in the ordinary course of business in accordance with past practices but shall in no event exceed an aggregate of \$100,000;

(o) the Company will promptly advise the Buyer in writing of any facts or circumstances that could give rise to a Material Adverse Effect or any breach of the Company's representations or warranties, or any breach of a covenant contained herein of which the Company has knowledge;

(p) the Company shall not, directly or indirectly, guaranty or otherwise become responsible for any obligation or liability of any third party;

(q) the Company shall not enter into any material contracts (or modify in a material way any such existing contracts) for the material purchase of communication services unless such contracts are first approved by Buyer; and

(r) the Company will not enter into any agreement or commitment to do any of the foregoing.

6.1.4. Acquisition Proposals. Following the execution of this Agreement and prior to the earliest to occur of (i) the termination of this Agreement under Article X or (ii) the Closing Date, the Company, the Sellers and/or any of its managers, governors, directors, partners, officers,

employees or other representatives or agents shall not, directly or indirectly, communicate, solicit, initiate, encourage or participate (including furnishing non-public information concerning the Company's business, properties or assets) in any discussions or negotiations with regard to any proposal to acquire, directly or indirectly, any shares of the capital stock or membership interests of the Company, to invest any funds in the Company, whether such proposal, acquisition, investment or other transaction involves a stock sale, a tender offer, exchange offer, merger or other business combination involving the Company, or for the acquisition of a substantial portion of the assets of the Company (an "Acquisition Proposal"). The Company will immediately communicate to the Buyer the identity of such other party and the initial terms of any proposal it may receive from any other party in respect of an Acquisition Proposal.

6.1.5. Notice of Proceedings. The Company will, upon becoming aware of any order or decree or any complaint praying for an order or decree restraining or enjoining the consummation of this Agreement or the transactions contemplated hereunder, or upon receiving any notice from any governmental department, court, agency or commission of its intention to institute an investigation into, or institute a suit or proceeding to restrain or enjoin the consummation of this Agreement or such transactions, or to nullify or render ineffective this Agreement or such transactions if consummated, promptly notify the Buyer in writing of such order, decree, complaint or notice.

6.2. Mutual Covenants. Each of the Company, each Seller severally and the Buyer covenants and agrees as follows:

6.2.1. Cooperation. The Buyer, the Company and the Sellers shall cooperate with each other and shall cause their respective officers, employees, agents, accountants and representatives to cooperate with each other after the Closing to ensure the orderly transition of the ownership of the Company and its business from the Sellers to the Buyer and to minimize any disruption to the business of the Company that might result from the transactions contemplated hereby.

6.2.2. Records. For a period of six (6) years after the Closing, upon reasonable written notice, the Buyer and the Sellers agree to furnish or cause to be furnished to each other and their respective representatives, counsel and accountants access, during normal business hours, such information (including records pertinent to the Company) relating to the Company as is reasonably necessary for financial reporting, tax and accounting matters, assistance in the preparation and filing of any returns, reports or forms or the defense of any tax claim or assessment; provided, however, that such access does not unreasonably disrupt the normal operations of the Company. Without limiting the foregoing, each of the Sellers shall have access to and the right, at such Seller's expense, to copy any books or records of the Company which relate to matters or events prior to the Closing.

6.2.3. Execution of Additional Documents. From time to time, as and when requested by a party hereto, each party hereto shall execute and deliver, or cause to be executed and delivered, all such documents and instruments and shall take, or cause to be taken, all such further or other actions as such other parties may reasonably deem necessary or desirable to consummate the transactions contemplated by this Agreement or the agreements, documents or instruments associated herewith.

6.2.4. Reasonable Efforts. Prior to the Closing, the Buyer and the Sellers shall undertake all reasonable efforts to take or cause to be taken all action and to do or cause to be done all

things necessary, proper or advisable under applicable laws and regulations to consummate and make effective the transactions contemplated hereby.

6.3. Covenants of the Buyer. The Buyer covenants and agrees as follows:

(a) The Sellers shall prepare all Tax Returns relating to the Company for periods ending on or prior to the Closing Date. The Buyer shall prepare all Tax Returns for periods which end after the Closing Date, provided that if such Tax Returns include any periods on or prior to the Closing Date, the Tax Returns shall be subject to Sellers' approval, which shall not be unreasonably withheld or delayed. All such Tax Returns shall be prepared in accordance with the past practices of the Company to the extent such practices comply with applicable law. The Tax Returns shall allocate all income and expenses for periods on or prior to the Closing Date to Sellers, including any bonuses payable by the Company on the Closing Date, except for any activity taken by or under the direction of Buyer on the Closing Date out of the ordinary course of business.

(b) The Company shall declare a distribution at Closing for any amount permitted to be distributed for income taxes for the period from January 1, 1999 through the Closing Date pursuant to Paragraph 6.1.3(i), above, but not already declared or distributed. The Company shall pay such distribution (if any) to the Sellers on the earlier of (i) the date when the amount thereof is finally determined by the Company, or (ii) the Closing Date. For purposes of the Closing Balance Sheet, any distributions made pursuant to this Paragraph 6.3(b) shall be deemed to have been made immediately prior to Closing.

(c) The Company and Buyer will not take a position on its Tax Returns inconsistent with any Tax Return filed by the Company which relates to any period on or prior to the Closing Date, or amend any Tax Return that relates to any period on or prior to the Closing Date, without the Sellers' written approval, which will not be unreasonably withheld. The Company will give Sellers prompt written notice concerning any investigation, claim, proceeding or audit concerning Taxes of the Company for any such periods, whether or not the Company intends to make an indemnity claim with respect thereto. Upon receipt of such notice, Sellers shall have the right at their expense to defend such investigation, claim, proceeding or audit in accordance with the provisions of Section 9.3 herein. The Sellers shall be entitled to, and the Buyer shall pay over to Seller upon receipt, any refunds of Taxes arising out of proceedings, audits, amended returns or otherwise relating to any period on or prior to the Closing Date. The Buyer shall be entitled to, and the Sellers shall pay over to Buyer upon receipt, any refunds of Taxes arising out of or otherwise relating to any period after the Closing Date.

6.4. Guarantees. The Buyer shall complete all arrangements necessary to secure the release of any obligations or guarantees of obligations of the Constituent Entities identified in the Disclosure Schedule 6.4. and agrees to deliver the release of same at Closing.

## ARTICLE VII

### Disclosure Schedule

7.1. General. Although the schedules and information set forth in the Disclosure Schedule specifically refer to the paragraph of this Agreement to which such schedule and information is responsive, each such schedule and information shall be deemed to have been disclosed with respect to any other paragraph of this Agreement or for any other purpose to which such disclosure is applicable. Terms used in the Disclosure Schedule and not otherwise defined therein shall have the same meanings as are ascribed to such terms in this Agreement. Any documents attached to the Disclosure Schedule are incorporated in their entirety into the Disclosure Schedule.

7.2. Updates to Disclosure Schedule. The Company or the Sellers shall have the right to supplement the Disclosure Schedule prior to the Closing by delivery to the Buyer prior to the Closing Date of any such supplement (a "Disclosure Supplement"). Each Disclosure Supplement shall be in writing and shall be delivered in accordance with Paragraph 11.2 of this Agreement and shall clearly indicate the change from the prior Disclosure Schedule or Disclosure Supplement, and specific written notice shall be given if Sellers and the Company reasonably believe such new disclosure may have a Material Adverse Effect. The Company and the Sellers shall promptly provide such information as the Buyer may reasonably request in order to evaluate the Disclosure Supplement. Unless the existence of any matter set forth in any such Disclosure Supplement which was not disclosed at the time of the signing of this Agreement (a "New Matter") would have a Material Adverse Effect, the Disclosure Schedule referred to herein shall be deemed amended and supplemented as of the Closing Date by all information including, without limitation, any New Matter set forth in any Disclosure Supplement and the warranties and representations of the Sellers made in Article IV hereof shall be deemed amended and supplemented by all such information set forth in each Disclosure Supplement; provided, however, if the New Matter has an adverse economic impact to Buyer, the Buyer and the Seller shall negotiate in good faith a reduction to the Purchase Price and if the Buyer and the Sellers are unable to agree on such reduction within five (5) days of the delivery of the relevant Disclosure Supplement, then the Independent Accounting Firm shall determine the form and amount of such reduction. The determination by the Independent Accounting Firm shall be made as promptly as practical and shall be binding inconclusive upon the parties hereto for purposes hereof. The party responsible for the expenses of the Independent Accounting Firm shall be determined pursuant to the applicable provisions of Paragraph 1.5(a), above. In such event all references to Disclosure Schedule shall include all Disclosure Supplements. To the extent that the existence of any New Matter would have a Material Adverse Effect, or results from an intentional action or omission by Sellers or any Constituent Entity with knowledge or reckless disregard that such action or omission would result in a breach of representation or warranty contained in Article IV, above, the Buyer shall have the right under Paragraph 10.1, below, (a) to terminate this Agreement by written notice to the Sellers within seven (7) business days after receipt of the Disclosure Supplement which includes the New Matter but prior to the Closing or (b) to consummate the transactions contemplated hereby. To the extent that the Buyer elects to so consummate the transactions contemplated hereby, the Disclosure Schedule shall be deemed amended and supplemented by all information set forth in each Disclosure Supplement, and the warranties and representations of the Sellers made in Article IV hereof shall be deemed amended and supplemented by all such information set forth in each Disclosure Supplement as if amended on the date of execution hereof.

## ARTICLE VIII

### Non-Disclosure

8.1. Non-Disclosure of Confidential Information. Except as may be agreed to in writing by the Buyer, each of the Sellers acknowledges and agrees, severally but not jointly, that such Seller shall not, at any time during the open five (5) year period following the Closing Date, disclose any Confidential Information (as hereinafter defined) to anyone other than to employees and representatives of the Buyer. For purposes of this Paragraph 8.1, the term "Confidential Information" shall mean all proprietary information which is not in or does not come into, the public domain through any fault of such Seller or information which such Seller is required by law or court order to disclose relating to the Company, its customers, products and services including, without limitation, the following: (i) all technical information relating to the provision of goods or services by the Company; (ii) information concerning pricing policies of the Company, prices charged by the Company to its customers, the volume of orders of such customers and all other information concerning the transactions of the Company with its customers or proposed customers; (iii) the customer lists of the Company; (iv) information concerning the marketing programs or strategies of the Company; (v) financial information concerning the Company; and (vi) information concerning salaries or wages paid to, the work records of and other personal information relating to employees of the Company.

8.2. Enforcement. In addition to all other legal remedies available to the Buyer for the enforcement of the covenants of this Article VIII, each of the Sellers hereby agrees severally but not jointly, that the Buyer shall be entitled to an injunction by any court of competent jurisdiction to prevent or restrain any breach or threatened breach hereof. Each of the Sellers further agrees severally, but not jointly, that if any of the covenants set forth herein shall at any time be adjudged invalid to any extent by any court of competent jurisdiction, such covenant shall be deemed modified to the extent necessary to render it enforceable.

## ARTICLE IX

### Indemnification

#### 9.1. Indemnification of the Buyer.

(a) Subject to the limitations, restrictions and conditions set forth in this Agreement, each of the Sellers shall severally but not jointly indemnify the Buyer Entities and the Company and hold them harmless from and against any and all damages, losses, deficiencies, actions, judgments, costs expenses, debts, liabilities and obligations (including reasonable attorneys' and accountants' fees) (collectively, "Claims") of or against the Buyer or the Company resulting from or arising out of (i) any misrepresentation or breach of any warranty made by such Seller (but not by any other Seller) in Paragraph 4.1, above, or (ii) any breach, default in performance or nonfulfillment of any covenant or agreement which is to be performed by such Seller (but only by such Seller) under this Agreement or any of the Seller Ancillary Documents including, without limitation, the covenants to be performed by such Seller in Paragraph 8.1, above.

(b) Subject to the limitations, restrictions and conditions set forth in this Agreement, each of the Sellers shall severally and jointly indemnify the Buyer Entities and the Company and hold it harmless from and against any and all Claims of or against the Buyer or the Constituent Entities resulting from or arising out of (i) any misrepresentation or breach of any warranty made by the Constituent Entities in Paragraph 4.2 of this Agreement, or (ii) any nonfulfillment of any covenant or agreement on the part of any Seller or any Constituent Entity under any of the Seller Ancillary Documents or this Agreement which is to be performed by any Seller or any Constituent Entity prior to the Closing.

9.2. Indemnification of the Sellers. The Buyer shall indemnify the Sellers and hold them harmless from and against any and all Claims of or against the Sellers resulting from or arising out of (i) any misrepresentation or breach of warranty of the Buyer contained in this Agreement or any of the Buyer Ancillary Documents on the part of the Buyer, or (ii) the breach, default in performance or nonfulfillment of any covenant or agreement on the part of the Buyer contained in this Agreement or any of the Buyer Ancillary Documents.



### 9.3. Procedure Relative to Indemnification.

(a) In the event that any party hereto shall claim that it is entitled to be indemnified pursuant to the terms of this Article IX, it (the "Claiming Party") shall so notify the party against which the claim is made (the "Indemnifying Party") in writing of such claim promptly (i) after discovery of the facts supporting the claim or (ii) receipt of a written notice of any claim of a third party (a "Third Party Claim") that may reasonably be expected to result in a claim by such party against the party to which such notice is given, as the case may be. Such notice shall specify the breach of representation, warranty, covenant or agreement claimed by the Claiming Party and the liability, loss, cost or expense incurred by or imposed upon or expected to be incurred by or imposed upon the Claiming Party on account thereof. If such liability, loss, cost or expense is liquidated in amount, the notice shall so state. If the amount is not liquidated, the notice shall so state and in such event a claim shall be deemed asserted against the Indemnifying Party on behalf of the Claiming Party, but no payment shall be made on account thereof until the amount of such claim is liquidated and the claim is finally determined.

(b) The Indemnifying Party may, upon receipt of written notice of a Third Party Claim and at its expense, defend such claim in its own name or, if necessary, in the name of the Claiming Party, unless the aggregate potential liability of the Claiming Party exceeds the aggregate potential liability of the Indemnifying Party (calculated assuming indemnification by the Indemnifying Party with reference to the limitations set forth in Paragraph 9.5, below), in which event the Indemnifying Party shall only have the right to defend the Third Party Claim with the consent of the Claiming Party, but shall have the right to participate at its expense in the defense thereof. The Claiming Party will cooperate with and make available to the Indemnifying Party such assistance and materials as may be reasonably requested of it, and the Claiming Party shall have the right, at its expense, to participate in the defense. The Indemnifying Party shall have the right to settle and compromise such claim only with the consent of the Claiming Party which consent shall not be unreasonably withheld. However, if the Claiming Party fails to consent to such settlement or compromise offer, the Indemnifying Party may continue to contest or defend such Third Party Claim and, in such event, the maximum liability of the Indemnifying Party as to such Third Party Claim will not exceed the amount of such settlement or compromise offer.

(c) In the event the Indemnifying Party shall fail or not have the right to assume the defense under Paragraph 9.3(b), above, or shall notify the Claiming Party that it shall refuse to conduct a defense against a Third Party Claim, then the Claiming Party shall have the right to conduct a defense against such claim and shall have the right to settle and compromise such claim with the consent of the Indemnifying Party which consent shall not be unreasonably withheld. Once the amount of such claim is liquidated and the claim is finally determined, the Claiming Party shall be entitled to pursue each and every remedy available to it at law or in equity to enforce the indemnification provisions of this Article IX and, in the event such amount is determined, or the Indemnifying Party agrees, that it is obligated to indemnify the Claiming Party for such claim, the Indemnifying Party agrees to pay all costs, expenses and fees, including all reasonable attorneys' fees which may be

incurred by the Claiming Party in defending such claim and in attempting to enforce indemnification under this Article IX, whether the same shall be enforced by suit or otherwise.

#### 9.4. Effect of Taxes and Insurance.

(a) Taxes. In determining the amount of any claim for which a Claiming Party is entitled to indemnification pursuant to this Article IX there shall be subtracted an amount equal to: (i) the present value of any tax benefit (Federal, state, local or foreign) realized, or reasonably expected to be realized, by such Claiming Party by reason of such claim minus; (ii) the present value of any tax detriment incurred or reasonably expected to be incurred by such Claiming Party as a consequence of the receipt of an indemnity payment pursuant to this Article IX. For purposes of this Subparagraph 9.4(a), the "present value" shall be calculated using the applicable annual Federal mid-term rate as that term is defined in the Code in effect for the month in which the calculation is made.

(b) Insurance. In determining the amount of any claim for which a Claiming Party is entitled to indemnification pursuant to this Article IX, there shall be subtracted an amount equal to all insurance proceeds actually received by such Claiming Party with respect to such claim, net of any increase in insurance premiums incurred by the Indemnified Party which can be demonstrated by such party to be directly related to such claim. In determining the amount of any claim for which any of the Buyer Entities or the Company is entitled to indemnification pursuant to this Article IX, there shall be subtracted an amount which the Sellers could show by a preponderance of the evidence would have been covered by insurance policies carried by the Constituent Entity immediately prior to Closing.

#### 9.5. Limits on Indemnification Claims.

9.5.1. Basket. Except with respect to claims for breaches of representations or warranties contained in Section 4.1, the Sellers shall not be required to provide indemnification under Paragraph 9.1, above, unless the damages for all such claim(s) of indemnification shall exceed in the aggregate \$625,000 (the "Basket Amount").

9.5.2. Maximum Amount of Indemnification. Except with respect to claims for breaches of representations or warranties which arise as a result of fraud committed by a Seller or a Constituent Entity or those representations or warranties contained in Paragraphs 4.1 or 4.2.10 for which there shall be no limit, in no event shall: (a) the aggregate liability of all of the Sellers with respect to all claims of indemnification by the Buyer exceed the aggregate amount of \$5,000,000.00, (the "Cap Amount"), and (b) the liability of any Seller with respect to all claims of indemnification exceed the product of the Cap Amount and the percentage set forth opposite such Seller's name on Schedule I attached hereto. Except with respect to the provisions of Section 9.1(b), above, and subject to the limitations in the preceding sentence, the liability of any Seller with respect to any individual claim of indemnification shall in no event exceed an amount equal to the product of the amount of such claim and the percentage set forth opposite such Seller's name on Schedule I attached hereto.

9.6. Sole Remedy; Termination. The sole remedy of the parties for any and all claims with respect to the transactions contemplated herein, whether under or as a result of this Agreement or otherwise, shall be the indemnity set forth in this Article IX, as limited by the

provisions set forth in this Article IX. Any claim for indemnification not submitted in writing prior to the expiration of the applicable survival period of the warranty, representation or covenant on which such claim is based shall be deemed to have been waived and no party shall have any further liability with respect thereto.

9.7. Set-Off. In the event the Buyer has any claims for indemnification pursuant to the provisions of this Article IX, subject to the limitations of this Article IX, the Buyer and Internet Services may set-off from the amounts payable to Sellers under the Notes, an amount equal to such claim for indemnification until the earlier to occur of (a) the mutual agreement between the Buyer and the Sellers as to the resolution of such claim for indemnification, or (b) the entry of a final judgment by a court of competent jurisdiction with respect to Buyer's claims for indemnification. In the event Buyer attempts to set-off any amounts due to Sellers under the Notes pursuant to this Paragraph 9.7, the amount set-off by the Buyer shall be placed in a separate interest-bearing escrow account pursuant to an escrow agreement mutually agreeable to the parties. The party entitled to the ultimate payment of the amount held in escrow shall be entitled to the interest earned thereon while in escrow.

## ARTICLE X

### Termination

10.1. Termination. This Agreement may be terminated at any time prior to the Closing Date:

(a) by the mutual written consent of the Buyer and the Sellers;

(b) by the Buyer, or the Sellers;

(i) if any court or governmental body or agency thereof shall have enacted, promulgated or issued any statute, rule, regulation, ruling, writ or injunction, or taken any other action, restraining, enjoining or otherwise prohibiting the transactions contemplated hereby;

(ii) if the Closing shall not have occurred on or before July 31, 1999; provided, however, that the right to terminate this Agreement pursuant to this Paragraph 10.1(b)(ii) shall not be available to any party whose breach of any representation or warranty or failure to perform or comply with any covenant or obligation under this Agreement has been the cause of, or resulted in, the failure of the Closing to occur on or before such date;

(c) by the Buyer pursuant to Article VII.

10.2. Effect of Termination. In the event of termination of this Agreement, this Agreement shall forthwith become null and void and there shall be no liability on the part of any party hereto, except for Paragraphs 11.1, 11.2 and 11.9 hereof and this Paragraph 10.2, which shall remain in full force and effect and which shall survive such termination, and provided that no

such termination shall relieve any party hereto from liability for any breach by such party of this Agreement.

## ARTICLE XI

### Miscellaneous

11.1. Expenses. Except as may be otherwise specifically provided herein, the parties hereto shall pay their own legal fees and expenses incurred in connection with the negotiation and consummation of the transactions contemplated by this Agreement, provided that the Company shall pay all fees and expenses of Godfrey & Kahn, S.C. and Arthur Andersen solely related to the transaction with the Buyer. The Sellers shall be responsible for all other fees of Godfrey & Kahn, S.C. The Buyers shall be responsible for any fees payable to Lehman Brothers in connection with the transactions contemplated herein. The Buyer shall be responsible for any fees payable to any brokers, consultants, or other agents retained by the Buyer in connection with the transactions contemplated herein.

11.2. Notices. All notices or other communications required or permitted to be given hereunder shall be in writing and shall be considered to be given and received in all respects when hand delivered, when sent one (1) business day after it is sent by prepaid express or courier delivery service, when sent by facsimile transmission actually received by the receiving equipment, or five (5) days after it is deposited in the United States mail, certified mail, postage prepaid, return receipt requested (or international equivalents thereof), in each case addressed as follows, or to such other address as shall be designated by notice duly given:

IF TO THE BUYER:

Jeff Smith  
1122 Capital of Texas Hwy. South  
Austin, TX 78746  
Facsimile: (512) 328-7902

With a Copy To:

Riordan & McKinzie  
695 Town Center Drive  
Suite 1500  
Costa Mesa, CA 92626  
Facsimile: (714) 549-3244  
Attention: Michael P. Whalen

IF TO THE COMPANY  
OR THE SELLERS:

Andrew Bursten  
2 Riverway  
Suite 800  
Houston, TX 77056  
Facsimile: (713) 623-7482

With a Copy To:

Craig Cavalier, Esq.  
3555 Timmon Lane  
Suite 1450  
Houston, TX 72027  
Facsimile: (713) 621-4779

With a Further Copy To:

Godfrey & Kahn, S.C.  
780 North Water Street  
Milwaukee, WI 53202  
Attn: Joseph M. Bernstein  
Facsimile: (414) 273-5198

11.3. Entire Agreement. This Agreement, the Disclosure Schedule, the exhibits attached hereto and the agreements executed and delivered simultaneously herewith constitute the entire agreement among the parties hereto relating to the subject matter hereof, and all prior agreements, correspondence, discussions and understandings of the parties (whether oral or written) are merged herein and superseded hereby, it being the intention of the parties hereto that this Agreement and the instruments and agreements contemplated hereby shall serve as the complete and exclusive statement of the terms of their agreement together. No amendment, waiver or modification hereto or hereunder shall be valid unless in writing signed by an authorized signatory of the party or parties to be affected thereby.

11.4. Assignment. This Agreement and the rights hereunder shall not be assignable or transferable (i) by the Buyer without the prior written consent of the Sellers or (ii) by the Company or any of the Sellers without the prior written consent of the Buyer. Notwithstanding the foregoing, however, a collateral assignment in this Agreement may be granted by any Buyer Entity to any lender to secure borrowings by any Buyer Entity or any of its affiliates.

11.5. Binding Effect. This Agreement shall be binding upon the parties hereto and their respective successors and permitted assigns.

11.6. Paragraph Headings. The headings in this Agreement are for purposes of convenience and ease of reference only and shall not be construed to limit or otherwise affect the meaning of any part of this Agreement.

11.7. Severability. The parties agree that if any provision of this Agreement shall under any circumstances be deemed invalid or inoperative, this Agreement shall be construed with the invalid or inoperative provision deleted, and the rights and obligations of the parties shall be construed and enforced accordingly.

11.8. Applicable Law. This Agreement and all questions arising in connection herewith shall be governed by and construed in accordance with the internal laws of the State of Texas without regard to the principles of conflicts of laws thereunder.

11.9. Counterparts. This Agreement may be executed in one or more original or facsimile counterparts, all of which shall be considered but one and the same agreement, and shall become

effective when one or more such counterparts have been executed by each of the parties and delivered to the other parties.

11.10. Passage of Title. Legal title, equitable title and risk of loss with respect to the Membership Interests will not pass to the Buyer until the Membership Interests are transferred at the Closing, which transfer, once it has occurred, will be deemed effective as of 12:01 AM, Central time, on the Closing Date for all purposes.

11.11. Use of Terms. In this Agreement, (a) the words "hereof," "herein," "hereto," "hereunder" and words of similar import mean and refer to this Agreement as a whole and not merely to the specific section, paragraph or clause in which the respective word appears, (b) words importing gender include the other genders as appropriate and (c) any terms defined in this Agreement may, unless the context otherwise requires, be used in the singular or the plural depending on the reference.

11.12. Facsimile Copy. This Agreement may be executed in facsimile copy with the same binding effect as an original.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day, month and year first above written.

**BUYER ENTITIES:**

**ECLIPSE TELECOMMUNICATIONS, INC.**

By: Benjamin J. Scott  
President & CEO (Title)

**IXC COMMUNICATIONS, INC.**

By: Benjamin J. Scott  
Chairman, President & CEO (Title)

**IXC INTERNET SERVICES, INC.**

By: Benjamin J. Scott  
President & CEO (Title)

01/11/99 MON 18:10 FAX

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GODFREY&KAHN SC

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002

01/11/99 MON 15:13 FAX 7136237482

Andrew Bursten

Tim Oleszczuk

01/12/99 TUE 14:57 FAX 7136237482

Andrew Bursten

7136237482 F.2

003

**RELIEFS:**

**RIVA BURSTEN 1994 TRUST**

w/d September 19, 1994

By: 

Lowell Gordon, Trustee

By: 

Andrew Bursten, Trustee

By: \_\_\_\_\_

Joseph M. Berenson, Trustee

**ANDREW M. BURSTEN 1994 TRUST**

w/d September 19, 1994

By: 

Lowell Gordon, Trustee

By: 

Andrew Bursten, Trustee

By: \_\_\_\_\_

Joseph M. Berenson, Trustee

**LAWRENCE BURSTEN IRREVOCABLE TRUST**

w/d March 23, 1975

By: \_\_\_\_\_

Joseph M. Berenson, Trustee

By: 

Andrew Bursten, Trustee

Andrew Bursten




**SELLERS:**

RIVA BURSTEN 1994 TRUST

u/a/d September 19, 1994

By: \_\_\_\_\_  
Lowell Gordon, Trustee

By: \_\_\_\_\_  
Andrew Bursten, Trustee


By:  \_\_\_\_\_  
Joseph M. Bernstein, Trustee

ANDREW M. BURSTEN 1994 TRUST

u/a/d September 19, 1994

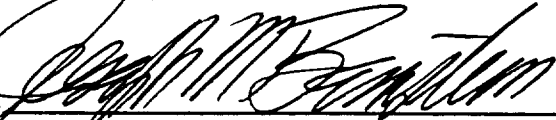
By: \_\_\_\_\_  
Lowell Gordon, Trustee

By: \_\_\_\_\_  
Andrew Bursten, Trustee

By:  \_\_\_\_\_  
Joseph M. Bernstein, Trustee

LAWRENCE BURSTEN IRREVOCABLE TRUST

u/a/d March 25, 1975

By:  \_\_\_\_\_  
Joseph M. Bernstein, Trustee

By: \_\_\_\_\_  
Andrew Bursten, Trustee

\_\_\_\_\_  
Andrew Bursten

CONSTITUENT ENTITIES:

COASTAL TELECOM LIMITED COMPANY,  
a Texas limited liability company

By: [Signature]  
(Title)

COASTAL TELEPHONE SERVICES LIMITED  
COMPANY, a Texas limited liability company

By: [Signature]  
(Title)

COASTAL TELECOM LIMITED COMPANY,  
an Oklahoma limited liability company

By: [Signature]  
(Title)

COASTAL TELECOM LIMITED LIABILITY  
COMPANY, a Tennessee limited liability company

By: [Signature]  
(Title)

COASTAL TELECOM LIMITED LIABILITY  
COMPANY, a Wisconsin limited liability company

By: [Signature]  
(Title)

1002-12002-17

**EXHIBIT C**  
**Verifications of the Parties**

**VERIFICATION**

\_\_\_\_\_  
STATE OF TEXAS )

COUNTY OF TRAVIS )  
\_\_\_\_\_)

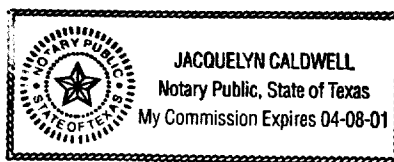
I, Jeffrey C. Smith, declare under penalty of perjury that I am Senior Vice President, General Counsel and Secretary of Eclipse Telecommunications, Inc., applicant in the subject proceeding; that I have read the foregoing Joint Application and exhibits and know the contents thereof; that the same are true of my own knowledge, except as to the matters which are therein stated on information or belief, and as to those matters I believe them to be true.

By: \_\_\_\_\_

Jeffrey C. Smith  
Senior Vice President,  
General Counsel & Secretary

Subscribed and sworn to before me  
this 27<sup>th</sup> day of January, 1999

Jacquelyn Caldwell  
Notary Public

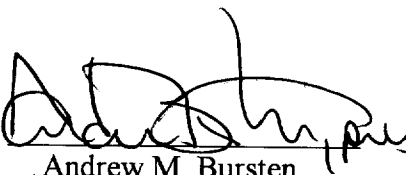


My commission expires: \_\_\_\_\_

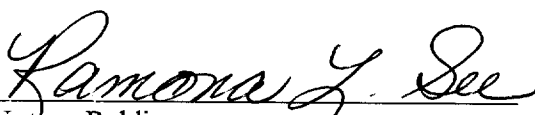
**VERIFICATION**

\_\_\_\_\_  
STATE OF TEXAS )  
 )  
 )  
COUNTY OF HARRIS )  
\_\_\_\_\_ )

I, Andrew M. Bursten, declare under penalty of perjury that I am President of Coastal Telecom L.L.C., applicant in the subject proceeding; that I have read the foregoing Joint Application and exhibits and know the contents thereof; that the same are true of my own knowledge, except as to the matters which are therein stated on information or belief, and as to those matters I believe them to be true.

By:   
Andrew M. Bursten  
President

Subscribed and sworn to before me  
this 20 day of January, 1999

  
Notary Public

My commission expires: 4-3-99